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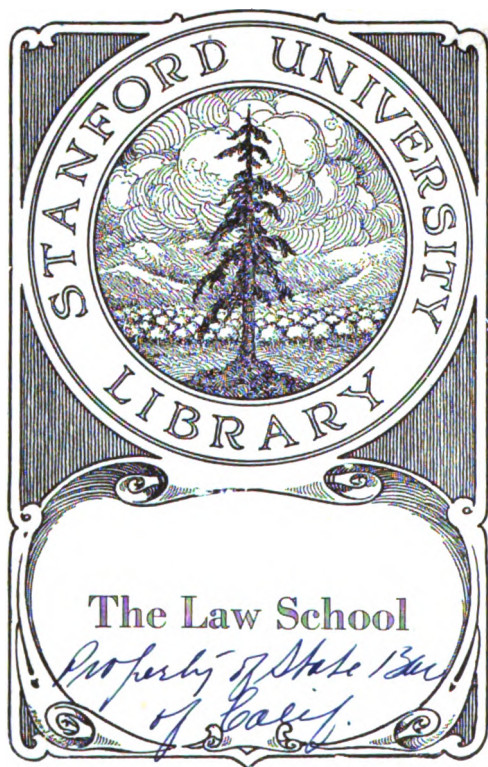
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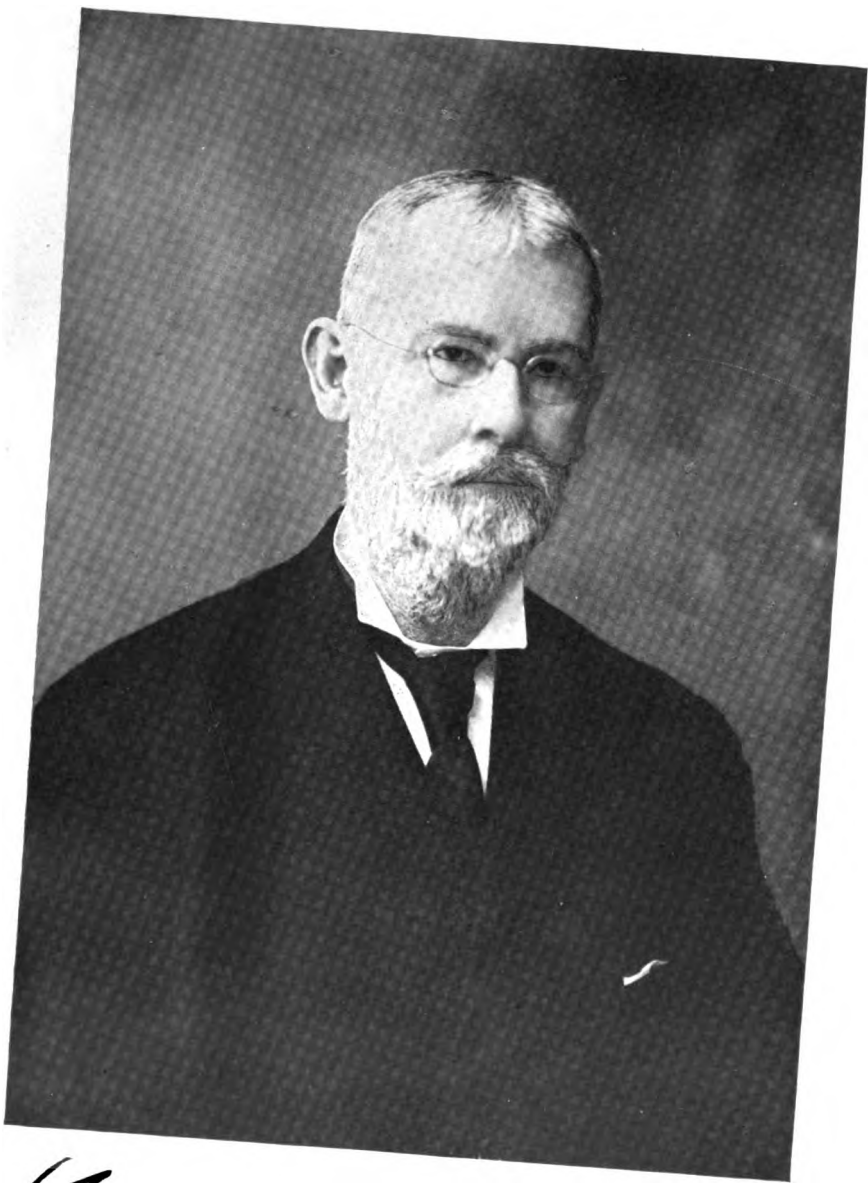
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Yours Truly,
Geo. W. Owens

109

THE
JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
OF GREAT BRITAIN AND IRELAND
PUBLISHED BY ORDER OF THE COUNCIL
IN THE YEAR 1876

1. *Pharmaceuticals*—The pharmaceutical industry is the largest of the three industries, with sales of \$10.5 billion in 1990. The industry is characterized by a high degree of concentration, with the top 10 firms accounting for 40% of sales. The industry is also characterized by a high degree of innovation, with a large number of new drugs being developed each year.

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REPORT
OF THE
THIRTY-THIRD ANNUAL SESSION
OF THE
GEORGIA BAR ASSOCIATION
HELD AT
TYBEE ISLAND, GEORGIA
JUNE 1-3, 1916

EDITED BY
ORVILLE A. PARK, SECRETARY
HARRY S. STROZIER, ASSISTANT SECRETARY

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Peeples, H. C.	Atlanta
Phillips, W. L.	Louisville
Porter, J. H.	Atlanta
Pottle, J. R.	Albany
Powell, A. G.	Atlanta
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Redfearn, D. H.	Albany
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Spalding, Hughes	Atlanta
Stevens, G. W.	Atlanta
Stofer, John R.	Savannah
Strickland, Robert, Jr.	Atlanta
Strozier, Harry S.	Macon
Stubbs, W. B.	Savannah
Taylor, E. S.	Summerville
Thomas, J. M.	Savannah
Thompson, A. H.	LaGrange
Travis, Robert J.	Savannah
Walsh, T. F., Jr.	Savannah
Wilcox, E. K.	Valdosta
Wilson, L. A.	Waycross
Yeomans, M. J.	Dawson

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REPORT OF PROCEEDINGS
OF THE THIRTY-THIRD ANNUAL SESSION OF
THE GEORGIA BAR ASSOCIATION, HELD
AT TYBEE ISLAND, GEORGIA,
JUNE 1-3, 1916.

MORNING SESSION, JUNE 1, 1916.

The thirty-third annual session of the Georgia Bar Association convened in the pavilion of Hotel Tybee, at Tybee Island, Georgia, at 11.30 A. M. on the first day of June, 1916. The meeting was called to order by the President, Mr. George W. Owens, of Savannah.

The President: The thirty-third annual session of the Georgia Bar Association now convenes. The first thing in order is the Report of the Executive Committee, Mr. Arthur G. Powell, of Atlanta, Chairman.

Judge Powell: Mr. President, Ladies and Gentlemen: The Executive Committee has had no extraordinary sessions during the year. It has attended to the ordinary duties of preparing the program and electing new members. The program will be developed from time to time during the week in accordance with the general outline of the preliminary announcement made and sent out to the members of the Association.

The following new members have been elected by the Executive Committee:

David S. Atkinson	Savannah.
J. A. Branch	Atlanta.
P. F. Brock	Macon.
Richard Curd	Macon.

Walter S. Dillon	Atlanta.
C. E. Dunbar	Augusta.
W. J. Fielder	Cedartown.
Emmett Houser	Fort Valley.
John B. Hutchison	Ashburn.
Rollin H. Kimball	Winder.
Clarence Leith	Atlanta.
Wallace Miller	Macon.
E. W. Moise	Atlanta.
Roy Worsham Moore	Macon.
Charlton G. Ogburn	Savannah.
Warren B. Parks	Dawson.
James H. Price	Tifton.
Robert Strickland, Jr.	Atlanta.
E. B. Weatherly	Macon.

The large attendance at the meeting, indicated by those who are present, as well as those who are here and to be present, is very gratifying to the Committee; and we are especially glad to see the large number of ladies in attendance.

One of the things which is beginning to be stressed more and more, much, as the Committee believes, to the advantage of the Association, is what may be called the lighter, social side of these meetings. We have a number of learned addresses on the program, and we have certain other things intended to amuse. Each night during the session of the Association there will be dancing in this pavilion. The orchestra of the hotel will furnish the music.

To-night there will be a "get-together" meeting under the charge of the Reception Committee.

Saturday at 3.00 P. M. there will be a steamboat excursion, the details of which will be announced later.

Now as to to-day's program: this morning the only matter other than the report of the Executive Committee will be the President's address. It is requested by one or more of the Savannah newspapers that immediately following the President's address the Association assemble for the taking

of a photograph. Colonel Rosser seems to dissent, but I think he ought to consent.

Mr. L. Z. Rosser, of Atlanta, interrupting: Well, I was just wondering what was going to happen when he took your picture.

Judge Powell, continuing: The photographer suggests that the picture should be taken at this side of the hotel, where those chairs are being placed at the present time.

Now, this afternoon the first paper will be an address by Mr. Luther Z. Rosser, of Atlanta. The text of his address is couched in such language that it should not be stated in the presence of the ladies, but he will give it privately to any of you who may desire it. The general title is "Where the Real Defect in Getting Results in Our Judicial System Lies." This will be followed by a charming little talk by Judge Joel Branham, of Rome, on the subject, "Equalizing Everybody." This will be followed by reports of committees in regular order.

In connection with the report of the Committee on Jurisprudence, Law Reform, and Procedure, which will probably be read during the afternoon, there will be a short paper of a serious nature by the least serious member of this Association, to-wit, Judge A. W. Cozart, of Columbus.

Now a few other announcements which I have been requested to make: To-morrow at the morning session will be delivered the Annual Address by Mr. Hampton L. Carson, of Philadelphia. This will be the main feature of the meeting, if we are not deceived in the man whom we have chosen for that address.

The Central Railroad requests the announcement made that those members returning, who wish reservations made to any point on the Central Railroad can secure them at the local station.

The Western Union Telegraph Company also wishes the announcement made that they have opened an office at the hotel for the convenience of delegates and visitors to the Convention.

Judge William H. Fish, the Chief Justice of our Supreme Court, has requested that announcement be made of his sincere regret at not being able to be present at this meeting. He had expected to be present, but at the last moment he was prevented from being here on account of the serious illness of his wife.

Col. A. R. Lawton, of Savannah: What are the hours of the meeting, and by what time?

Judge Powell: Eastern time will be observed. The Committee decided that we would follow Savannah time which is one hour faster than Georgia time. (Laughter.) This afternoon the Association will meet at 4.00 o'clock by Savannah time, which is 3.00 o'clock by the time of the rest of the world. (Laughter.)

The President: Following the program as outlined by the Chairman of your Executive Committee the next in order is the President's Address. I will ask your indulgence for a few moments.

(For the Address of President Owens, see page 63.)

The President: I think that completes the program, as outlined by your Executive Committee, with the exception of having our beauty struck at the hotel. However, Mr. Alston wishes to hold the meeting in session for a moment.

Mr. R. C. Alston, of Atlanta: I move the adoption of the following resolution:

"BE IT RESOLVED by the Georgia Bar Association in meeting assembled that the Legislature of the State of Georgia be, and it hereby is, respectfully requested to enact such laws as may be necessary to enable women to be admitted to practice law upon the same terms and conditions as apply to men." (Applause.)

Mr. L. Z. Rosser, of Atlanta: We have been afflicted with that every year.

Mr. Alston: If I may, I would like to speak a word to that resolution.

Mr. Rosser: Wait till everybody gets here, Bob. Let's not have any "gag" law, even on the woman question.

The President: As the resolution was seconded, the matter is open for discussion.

Mr. Rosser: Why not wait till to-morrow? I move we lay it on the table till to-morrow, and take it up to-morrow.

Judge S. B. Adams, of Savannah: I second the motion.

Mr. Alston: A motion to lay on the table till a definite time is debatable.

Mr. Rosser: Well, I'll put it on the table indefinitely, if you want me to.

Mr. Alston: If this will be deferred until a time certain, I will be very glad to yield to the suggestion; but the first matter on the program to-morrow morning is the address of the visitor. Suppose we put it for this afternoon.

Mr. Rosser: Wait till any time to-morrow.

Mr. Alston: I think we will let it go to a vote.

Judge Adams: We will have a larger attendance to-morrow.

Mr. Alston: We have an attendance here now that is sufficient. I have been asked to introduce the like of this resolution by the Equal Suffrage party of Georgia.

Mr. Rosser: Oh, my God, it's getting worse and worse!

Mr. Alston: There are only three States of the Union, which withhold this law. They are Georgia, Arkansas, and West Virginia.

Mr. Rosser: Well, they belong to an honor roll.

Mr. Alston: I do not think that is very good company for Georgia. I think the greatest State East of the Mississippi River deserves a better classification than that.

Mr. Rosser: I understand that, while the motion to table is debatable, the idea is to debate the question of putting it on the table. It is not to debate the question, and I call him to order.

Mr. Alston: I do not know how you can debate the question of putting it on the table without discussing whether or not the matter is meritorious.

The President: The merits of the original motion cannot be debated on the question of laying on the table.

Mr. Alston: I do not concede that, because I do not see how we can come to a fair conclusion on the question of tabling to a time certain without considering the merits of it.

Mr. Rosser: And he is a lawyer, too.

Mr. Roland Ellis, of Macon: Do not the rules provide for the commitment of resolutions:

Mr. John M. Slaton, of Atlanta: I should think we could commit.

Mr. Alston: There is a motion before the house to table it until to-morrow morning.

Mr. Ellis: You cannot table a motion to a time certain. I move we commit this to the Executive Committee with the request for the appointment of some stated time and place for its discussion and action.

Judge A. G. Powell, of Atlanta: To-morrow morning the address of Mr. Carson will in all probability be the last thing for the morning session. That would give us some time to-morrow morning which we might devote to this purpose. The attendance will undoubtedly be larger to-morrow than it is to-day. I merely make that as a suggestion. We will be glad to put it on as a special order to-morrow morning at 11.00 o'clock.

Mr. Alston: I rise to a point of order on Mr. Ellis' motion: there was a motion already before the house.

Mr. Ellis: That motion was entirely out of order because under no sort of parliamentary practice can you table a motion to a time certain; and you cannot table the resolution until to-morrow morning.

Mr. Slaton: Mr. Alston has no right to bring that motion before this body at this time at all, because the program has been arranged. The Executive Committee has arranged what is to be done this morning, and he has no right to bring a matter before this body without the body being informed in advance of what is coming up. We might as well bring up the matter of where we are going to meet next year. This

not being under the head of general business, or new business, or unfinished business, is out of order.

Mr. Alston: Suppose we wanted to now determine when and where we would meet next time, why should we not do it now?

Mr. Slaton: Because the Executive Committee has the power to—

Mr. N. L. Hutchins, Jr., of Lawrenceville, interrupting: The business of the morning session having been completed, I move that we do now adjourn until 4.00 o'clock, Savannah time, this afternoon.

This motion was seconded and put to a vote. The Chair was in doubt as to the result. Division was called for, and the motion was declared carried by a vote of 42 to 24.

The morning session was then adjourned.

AFTERNOON SESSION, JUNE 1, 1916.

The afternoon session was called to order at 4.00 o'clock, Savannah time, President Owens in the Chair.

The President: The meeting will please come to order.

Judge A. G. Powell, of Atlanta: The Executive Committee presents to the Association for election to membership the names of

W. A. Dodson.....Americus.

R. L. Maynard.....Americus.

It is necessary that they shall be elected by ballot of the Association, as they are recommended by the Executive Committee while the Association is in session.

Mr. T. M. Cunningham, of Savannah: I move that the rules be suspended, and that the Secretary be instructed to cast the ballot of the Association for these applicants.

This motion was seconded and carried, and the Secretary cast the ballot of the Association electing the applicants.

Judge A. G. Powell, of Atlanta: The next order of business for this afternoon is the report of Treasurer Harrison

This report has been audited by the Executive Committee, and there are one or two things we would like further information about. We notice a small bill for near-beer. We wish to know if that is still on hand. We notice also an item of expense for the relief of the "Spring Court." We want to know if that means "Spring Chicken Court."

The Treasurer, Mr. Z. D. Harrison, of Atlanta: It is quite evident that the interest of the Chairman of the Executive Committee in this report depends entirely upon the transcript in the report of sundry matters of incidental expense. From this report it appears that the balance on hand on June 3, 1915, was \$1,502.69; collected since that date, \$1,905.00; disbursements, \$1,843.61. Unless some one else other than the Chairman of the Executive Committee calls for the specification of those disbursements, I will omit the reading. The balance on hand June 1, 1916, is \$1,564.08, which is ample to give the Chairman of the Executive Committee and his friends all the pleasure that I hope they will expect. (Laughter.)

Mr. Robert W. Barnes, of Macon: I move that the report be accepted.

The motion was seconded and carried.

Judge Powell: It is expected to spend some part of that balance on the pleasure of this body before the week is over. (For the Treasurer's report, see page 370.)

Judge Powell: The by-laws provide for the appointment at this time of a Nominating Committee consisting of five members. Mr. President, we might get through with that before we take up the papers.

The President: The Chair appoints on that Committee:

L. Z. Rosser, Chairman	-----Atlanta.
Sam S. Bennet	-----Albany.
T. M. Cunningham	-----Savannah.
Roland Ellis	-----Macon.
S. H. Sibley	-----Union Point.

Judge Powell: In order that the Association may be informed as to the rest of the program, the next in order will be the address by Mr. L. Z. Rosser, of the Atlanta Bar, whose subject I announced this morning. That will be followed by the paper by Judge Joel Branham, of Rome, under the title, "Equalizing Everybody." That will be followed by Committee reports, and, as I stated this morning, part of the report of one of the Committees will be a talk by Judge Cozart.

I want to repeat at the request of the agent of the Central Railroad that for those of you who wish sleeping car reservations for Saturday or Sunday night, the local agent at the ticket office will take pleasure in making reservations.

Also, I had better announce tentatively what the program will be for to-morrow morning. The Association will probably meet to-morrow morning at 10.30, Savannah time, 9.30 o'clock otherwise time. There seems to be some objection to my saying "real time." Opportunity will be given for the consideration of such resolutions as any member may desire to present for adoption. It is the purpose of the Committee to give Mr. Alston's resolution the right of way over any others at that time. Then, if sufficient time remains after the consideration of the resolutions, not only on Mr. Alston's subject but on others of real import to the Association, we will take up reports where we will have left off this afternoon. At 12.00 o'clock Mr. Carson's address will be delivered. The first thing to-morrow morning at 10.30 will be a paper by Mr. Z. D. Harrison. That was not put upon the printed announcement sent out because Mr. Harrison at that time was not satisfied he could give it to us. His subject will be "Reminiscences of the Supreme Court." Mr. Harrison, as you know, has been with the Supreme Court, I hesitate to say how long on account of his wife's being present. He has known the Court for many years through many vicissitudes, and he knows many interesting things about the Court. The Committee asked him as an especial favor to set down a few of those things that they might be perpetuated in the report

of our sessions. There will be no more interesting paper presented to this body than Mr. Harrison's discussion of those matters.

The President: First will be the address by Mr. Rosser.

Mr. L. Z. Rosser, of Atlanta: Mr. Chairman, Ladies and Gentlemen: Lawyers have the reputation of being very slick, and they are sometimes said to be fraudulent. The Committee has perpetrated a fraud upon the bar by the suggestion that my remarks would be upon a certain line. They privately told me to speak as I pleased. Knowing that I was inclined to do that anyway, they suggested it, and I am going to speak out what I please. For reasons that to me appear to be wise reasons, I shall not trust myself to speak what might just come from the rippling brook, but I will read what I have maturely considered. It may be discovered to your mind, when I get through, that perhaps it was not very maturely considered.

(For Mr. Rosser's paper, see page 91.)

The President: Next on the program is an address by Judge Joel Branham, of Rome.

Judge Joel Branham, of Rome: I have listened with very great interest to the address of Mr. Rosser, one of the ablest papers I have ever heard read. I noticed, however, it was in print, and I wondered where in the world he got it, and who wrote it. (Laughter.) I want to endorse it, more especially two features of that address, one relating to amendments of indictments, and I will say also amendments of civil suits. As the result of my experience with special demurrers, I suggest to you that you avoid them because they only teach an unskillful lawyer how to plead and a willing witness how to swear.

In reference to the review of verdicts by the Supreme Court I heartily approve what our brother Rosser has said. I favor the abolition of the ironclad rule, not only in criminal cases but in civil cases.

(For Judge Branham's paper, see page 116.)

The President: The next order of business is the report of the Committee on Legislation, Mr. Z. B. Rogers, Chairman.

Mr. Z. B. Rogers, of Elberton: One member of the Committee has not yet arrived, and we would like to defer the report until to-morrow.

Judge Powell: The next report is the report of the Committee on Jurisprudence, Law Reform, and Procedure, but the Chairman of that Committee, Judge Spencer R. Atkinson, will not be here until to-morrow morning, and the report should be deferred. Nevertheless the Committee has decided to let Judge Cozart's paper, which was offered in connection with that report, be given now.

(For Judge Cozart's paper, see page 225.)

Judge Powell: Is Mr. Douglas, Chairman of the Reception Committee, in the building?

The President: He is not here now.

Judge Powell: The hour for adjournment has arrived. To-night I understand the Reception Committee will be in charge at this place, and it is the desire that everybody shall meet everybody else with as little formality as possible. In other words, if a lady smiles at me, I will smile back at her. I mean that of course in the third person, when I say "me." I understand the orchestra will be here, and there will be music and dancing.

To-morrow morning the Association will meet at 10.30 o'clock. The first paper will be Mr. Z. D. Harrison's paper on "Reminiscences of the Supreme Court," followed by resolutions, and Committee reports, and at 12.30, or as soon as Mr. Carson gets here from the train, his address will be delivered.

The President: Without the formality of a motion, the meeting will now stand adjourned until 10.30 o'clock to-morrow morning.

MORNING SESSION, JUNE 2, 1916.

The morning session of the second day of the Convention was called to order at 10.30 o'clock, Savannah time, by President George W. Owens, of Savannah.

The President: The meeting will come to order. What is the first matter for consideration this morning?

Judge A. G. Powell, of Atlanta: The first matter which the Executive Committee calls to the attention of the Association this morning is the fact that there have been filed four additional applications for membership, as follows:

Fred T. Lanier	Statesboro.
J. S. Powell	Sylvania.
Louis S. Moore	Thomasville.
A. L. Franklin	Augusta.

These applications have been properly attested.

A motion was made and carried that the Secretary cast the ballot of the Association for these applicants upon a suspension of the rules. The Secretary cast the ballot, and they were declared elected.

Judge Powell: I will now announce the program for this morning. First will be the address by Mr. Z. D. Harrison on the subject, "Reminiscences of the Supreme Court." This will be followed by a symposium on the general topic, "Lynching," to be participated in by Mr. Robert C. Alston, of Atlanta, and Judge Samuel B. Adams, of Savannah. This will be followed by the introduction and discussion of resolutions, and, if that does not consume the time until noon, there will be reports of Committees. At noon we will have the address of the day by Mr. Hampton L. Carson, of Philadelphia, who has just arrived.

This afternoon the first thing on the program will probably be the report of the Committee on Nominations, and the election of officers for the ensuing year. Then there will be a humorous symposium in which the six most serious members of the Association will be called upon to say some-

thing serious—Mr. E. R. Black, of Atlanta; Judge Henry C. Hammond, of Augusta; Judge A. W. Cozart, of Columbus; Judge Joel Branham, of Rome; Mr. W. I. MacIntyre, of Thomasville, and Mr. Roland Ellis, of Macon.

To-night Mr. Robinson, of the Central Railroad, has invited us to come across to the other pier where we will have moving pictures and music, which invitation the Executive Committee decided to accept on behalf of the Association.

As to the steamboat excursion, we are not able at this moment to give you all the details except that it will leave the municipal dock at approximately 3.00 o'clock to-morrow, Savannah time, Central time, 2.00 o'clock. Time here means Savannah time, because Savannah time is the best time to have a good time I ever saw. The boat will take a route through some of the inland waters and luncheon will be served on board. The boat will return in time for us to take the evening trains. All the members of the Association, visitors, and ladies are invited to go on this boat excursion. There is no charge at all. It is understood that all the members and their guests and friends are entitled to go.

The President: We will now hear from Mr. Z. D. Harrison.

Mr. Z. D. Harrison, of Atlanta: On yesterday Judge Powell announced that in response to importunities of the Executive Committee I would at this hour give some reminiscences of the Supreme Court. I assume that by "reminiscences" our facetious Chairman probably meant amusing incidents. I am quite sure no other member of the Committee ever suspected that I could narrate an amusing incident, tell a joke, or be otherwise funny. Unfortunately in my make-up the quality of fun was omitted. You are to hear only a sketch of the personnel and work of the Supreme Court, with an appeal in its behalf for your help.

(For Mr. Harrison's paper, see page 122.)

Mr. I. J. Hofmayer, of Albany: I move that Mr. Harrison be requested to turn over to the Secretary that interesting personal reminiscence to be appended to his regular

paper as part thereof, and published as a part of the regular minutes of this meeting.*

This motion was seconded and unanimously carried.

The President: Next in order will be the Symposium on Lynching, in which Mr. Robert C. Alston and Judge S. B. Adams will participate. I will call on Mr. Alston first.

Mr. R. C. Alston, of Atlanta: Mr. President, Brethren of the Georgia Bar Association, Ladies and Gentlemen: It falls to my lot to deliver this paper on Lynching. I will call it, "Concerning Lynching."

(For Mr. Alston's paper, see page 141.)

Judge A. G. Powell, of Atlanta: The Executive Committee now recalls the further announcements for the morning program, as the time has arrived for the annual address. There will be an intermission of five minutes, after which the annual address will be delivered; and at the conclusion of Mr. Carson's address the morning session will be adjourned.

The afternoon session will begin at 4.00 o'clock, Savannah time, when we will have the report of the Nominating Committee, election of officers, and the humorous symposium, to which reference has been made.

After five minutes' intermission, the meeting was again called to order.

The President: The meeting will come to order. Gentlemen of the Bar Association, Ladies and Gentlemen: I take pleasure in introducing our annual orator, Hampton L. Carson, Esq., of the Philadelphia Bar. His name and fame are so well known that he needs no further introduction. (Applause.)

Mr. Hampton L. Carson, of Philadelphia: Mr. President, Members of the Georgia Bar Association, Ladies and Gentlemen: I assure you that it was with a keen sense of gratification that I received your invitation to deliver this annual address. The Georgia Bar Association is one of the oldest associations of its kind among our sister States. It

*The reference is to a short paper explaining how Mr. Harrison became Clerk of the Supreme Court. This paper will be found incorporated at the proper place in Mr. Harrison's main paper.

is some twelve years older than that of my own State. It was among the first to acquire such a position of influence and dignity as makes an invitation to address it a coveted opportunity which any American lawyer might reckon among the honors and privileges of his life.

Exactly why you picked out a Philadelphia lawyer I am at a little loss to understand. In the early days the Philadelphia lawyers were not as highly regarded as the maxim quoted now from one end of the country to the other would lead us to believe. I remember that some fifteen years ago I picked up at an old book-stall in London a little brochure of about fifty pages, printed in 1690, just eight years after William Penn had landed in America, which gave an account of "ye flourishing Province of Pennsylvania," at that time consisting almost exclusively of the Town of Philadelphia and containing some two thousand people. After speaking of bricklayers, masons, carpenters, brewers and jewelers, the author said: "Of lawyers and doctors I shall say nothing, because the place is very peaceful and healthful" (laughter); and then he added his prayer: "Long may we be preserved from the pestiferous drugs of the one and the abominable loquacity of the other." (Laughter.) Now I am not going to avenge myself upon you for that somewhat doubtful compliment.

(For Mr. Carson's address, see page 68.)

Mr. John M. Slaton, of Atlanta: Mr. President, I move that a vote of thanks be extended to Mr. Carson for his able and learned address.

This motion was seconded and unanimously carried.

The morning session was then adjourned.

AFTERNOON SESSION, JUNE 2, 1916.

The afternoon session was called to order at 4.00 o'clock, Savannah time, by Second Vice-President Z. B. Rogers, of Elberton.

The Second Vice-President, presiding: Come to order,

gentlemen. What is the first order of business, Mr. Secretary?

The Secretary: The application for membership of Mr. G. Noble Jones, of Savannah, is before the Association with proper recommendation by the Executive Committee.

The Second Vice-President, presiding: If there is no objection, we will have the Secretary to cast the ballot of the Association for him.

No objection was heard, and the Secretary having cast the ballot of the Association, Mr. Jones was duly declared elected to membership.

The Second Vice-President, presiding: We will now resume our program where we left off this morning. The next paper of the Symposium on "Lynching" is by Judge S. B. Adams, of Savannah. We will be glad to hear from Judge Adams at this time.

Judge S. B. Adams, of Savannah: I will say for the comfort of a most friendly audience that my paper will be short.

(For Judge Adams' paper, see page 157.)

Judge A. G. Powell, of Atlanta: The Executive Committee announces the program for the remainder of this afternoon. Next is the report of the Nominating Committee, and the election of officers. Then there is to be a humorous symposium, as it is called. Then a symposium on suggestions for relief of the appellate courts; and if that does not consume the afternoon, we will take up resolutions.

As I have stated, to-night you and your wives and friends are invited to the other pavilion, where there will be dancing and motion pictures. The Association has accepted the invitation.

As to to-morrow's program — the Executive Committee has decided that I personally have not been allowed to say enough, and they have requested that I present a report on the Torrens System. That will be to-morrow morning. Then there will be the reports of the Standing Committees.

The Second Vice-President, presiding: We will now have the report of the Nominating Committee.

Mr. L. Z. Rosser, of Atlanta, reading the report: On account of his long service to this Association and his eminent fitness for the office, the Committee has departed from the general rule and nominates the present First Vice-President of the Association for the office of President: Wm. H. Barrett, of Augusta.

The Committee also reports the following nominations:

First Vice-President, I. J. Hofmayer, Albany.

Second Vice-President, Wm. H. Burwell, Sparta.

Third Vice-President, A. W. Cozart, Columbus.

Fourth Vice-President—Millard Reese, Brunswick.

Fifth Vice-President, John R. L. Smith, Macon.

Secretary, Orville A. Park, Macon.

Assistant Secretary, Harry S. Strozier, Macon.

Treasurer, Z. D. Harrison, Atlanta.

Executive Committee:

Shepard Bryan, Chairman, Atlanta.

H. F. Lawson, Hawkinsville.

W. W. Douglas, Savannah.

H. I. Fullbright, Waynesboro.

Of which Committee the President, the Secretary, and the Treasurer are *ex officio* members.

Respectfully submitted,

L. Z. ROSSER, Chairman.

SAM S. BENNET,

S. H. SIBLEY,

T. M. CUNNINGHAM, JR.

ROLAND ELLIS,

Committee.

Mr. John M. Slaton, of Atlanta: I move that the report of the Committee be adopted and that the Secretary cast the ballot of the Association for the gentlemen named by the Committee.

This motion was seconded and carried.

The Secretary: Without undertaking to read the nominations, as made by the Committee, I take pleasure in casting

the unanimous vote of the Association for the ticket as named.

The Second Vice-President, presiding: We will now resume our program, as announced by the Executive Committee. The first paper will be that of Judge Joel Branham, of Rome. Judge Branham.

Judge Joel Branham, of Rome: I have listened with pleasure to three of the finest papers I have ever heard before this Association, and I am reluctant to turn away from the impressions they have made, to the recital of anecdotes and humorous remarks. I endorse them all, especially that of Mr. Alston on lynching. He has sounded a note of warning to us all. Let us heed it. So far as my judicial record and memory goes, I have known of no injustice done the negro in the courts. I have in mind now the case of the State against Geo. Kirk, 73 Ga., 620, a white man, indicted for the murder of a negro named Dick Radford, tried before me in Polk Superior Court in 1884. Kirk was convicted on circumstantial evidence and sentenced to the penitentiary for life. I refer, with pardonable pride, to my charge reported in full in the case, because several judges have commended it as embracing so many rules of criminal law.

At the second term of court I ever held, in 1882, at Dallas, Georgia, I put thirty-six negroes on trial at the same time. One side of the court-house was filled with the defendants. A gang of negroes at work on the construction of the tunnel on the Southern Railroad had killed a man named Hicks. He had maltreated them. The leaders were convicted of murder and sentenced to the penitentiary for life. The rest were indicted for riot. Col. C. D. Phillips agreed with the Solicitor-General to try them together on the condition that as to such of them as were identified as among those who killed Hicks, a verdict of guilty should be rendered and a verdict of not guilty as to those not so identified. They divided them equally, One-half were convicted and one-half acquitted. I sentenced those convicted to nine months in the chaingang, sent them to Rome, and they built a mile of one of the finest roads in Floyd County.

(For Judge Branham's paper, see page 163.)

The Second Vice-President, presiding: The next treat in store for us is the paper by Judge A. W. Cozart, of Columbus:

(For Judge Cozart's paper, see page 171.)

The Second Vice-President, presiding: The next number is the paper by Mr. Roland Ellis, of Macon.

Mr. Roland Ellis, of Macon: Mr. Chairman, Ladies and Gentlemen: I am not naturally a funny man. These occasions really mean a great effort upon my part. I am not naturally of a jovial disposition, and I have never understood how I ever got placed in this category by the Secretary of this Association. At regular intervals throughout its life I have been called upon to participate in some part of a clown's performance, which has always been with great pain to myself as well as pain to the audience. I am almost annually invited to perform here in company with certain other people, who also bear the reputation of being funny. (Laughter.) And, as usual, I received a request (which is in the shape of an order, when delivered by the autocrat who draws the salary of this Association) to appear here, and relate my interesting and humorous experiences in the practice of the law.

(For Mr. Ellis' paper, see page 178.)

The Second Vice-President, presiding: We will now be glad to hear from Judge Henry C. Hammond, of Augusta.

(For Judge Hammond's address, see page 185.)

The Second Vice-President, presiding: After the next paper we will stand adjourned. We have one of the best yet to come: Mr. W. I. MacIntyre, of Thomasville.

(For Mr. MacIntyre's address, see page 197.)

At the conclusion of Mr. MacIntyre's remarks the afternoon session was adjourned.

MORNING SESSION, JUNE 3, 1916.

The morning session of the last day of the Convention was called to order at 10 o'clock by the President, Mr. Geo. W. Owens, of Savannah.

The President: The Association will be in order. We will hear from the Chairman of the Executive Committee, if he has anything to present at this time.

Judge A. G. Powell, of Atlanta: The Executive Committee has the application for membership of Mr. Gustavus J. Orr, which has been properly approved. I move that the rules be suspended, and that the Secretary be instructed to cast the ballot of the Association for Mr. Orr.

This motion was seconded and carried, and the ballot was cast. Mr. Orr being then declared duly elected to membership.

Judge Powell: The first matter on the program this morning is the report of the Torrens Land Title Commission; then the discussion of appellate court procedure; then reports of Committees; then the introduction and discussion of resolutions.

In regard to the report on the Torrens System, it happens that I am Chairman of that Commission, and that the other two members are absent. It was put on the program because the Executive Committee thought I would not have an opportunity to speak this morning, and, knowing how extremely modest I am about talking (laughter), they decided to give me this opportunity. However, I wish now to disabuse your minds by stating that it will be impossible to discuss that report this morning, and I am not going to avail myself of the privilege.

Mr. John M. Slaton, of Atlanta: I move he be given leave to print. (Laughter.)

Judge Powell: Regarding the Committee reports, it will be impossible to read them at length. Whenever the Chairman of the Committee called is present, if he has anything to

call to the immediate attention of the Association, time will be given for a brief presentation of it, and leave will be given to print the remainder of the report.

When it comes to the introduction and discussion of resolutions, it will be necessary to make special rules as to that. There will naturally come up a resolution which was before the house at its adjournment Thursday noon, known as the "Alston fire-brand resolution."

Mr. L. Z. Rosser, of Atlanta: The perpetual and perennial resolution. (Laughter.)

Judge Powell: It has been heard of before by this Association. The Committee has decided that seven and one-half minutes will be given Mr. Alston to speak to the resolution. Seven and one-half minutes will be given Mr. Rosser in opposition to the resolution; and to Judge Cozart and such other members as may desire to discuss it, three minutes each. When the discussion is over, then a vote will be taken in due course.

The President: First is the Report on the Torrens System.

Judge Powell: Mr. President, by an Act of the General Assembly approved August 14, 1914, three commissioners were appointed to investigate and present to the General Assembly a report on the question of the Torrens System. That Commission did considerable work last spring and summer, having a number of public meetings. Having studied the question for several weeks, they presented a rather lengthy report to the General Assembly, embodying therein a bill, which bill was passed by the General Judiciary Committee of the Lower House without amendment, just as it was drawn, and by their almost unanimous vote.

The Bar of the State have been asking the members of that Commission and others where they could get a copy of that report. While the General Assembly had three hundred copies printed, the report was not accessible to the general public. The members of the Executive Committee, which met early in the year, asked that it be put on for discussion. I suggested then that if the Bar Association really wanted it, they should have the bill printed as part of their official documents,

and sent to the members. To discuss a bill as long as this is, and to attempt to give the Association anything like an idea of what is involved in the different phases of the bill, would take up more time than we could afford. It is a hundred and some odd pages—

Mr. L. Z. Rosser, of Atlanta, interrupting: Nobody will ever understand it anyhow.

Judge Powell, continuing: It is impossible to discuss it with anything like intelligence within the time we have, and I am going to ask leave of the Association and the other members of the Committee to have it filed as one of the official documents of the Association.

Mr. L. Z. Rosser: *Requiescat in pace.* (Laughter.)

The Secretary: The matter was advocated by Mr. Washington Dessau for about ten years. He advocated its passage, and urged it on the Legislature, and there were various committees from time to time instructed to take the matter up. Under conditions as they appeared, there seemed to be a fair chance of getting some sort of a bill passed through this present Legislature, but the Association and its members and the public generally are entirely uninformed of this report of Judge Powell's, and of the bill that it is proposed to pass. If I simply file this report, as Judge Powell suggests, it would be absolutely lost—it would "rest in peace," as suggested by Mr. Rosser—and it seems to me we ought to have an opportunity for studying it. It may be that we will not approve it at all, but we do not know whether we will or not. I have not been able to find a copy of it anywhere. Although, as Judge Powell says, three hundred copies were furnished to the Legislature, we have not got them at the present time. We have some little time before the meeting of the Legislature, and, if it is a good measure, and we approve of it, we ought to assist in its passage. If we do not approve it, we ought to kill it if we can. I move that the Association print and distribute to its members prior to the meeting of the Legislature this report of Judge Powell's. It will be of course included in our regular published report, but we ought to have it in ad-

vance of the publication of the report, because it would require a longer time to get it into the hands of the members if we wait for the report. If we print it that way and get it in our report, the cost of the additional copies will not break the Association, and it will give us at least an opportunity to study it.

Mr. Rosser: I heartily concur in that. I think Judge Powell and the other members of the Commission have reached a position where they can see light. What we are doing though is going to be the death-knell of the matter. The Legislature will not adopt anything in the world that the Bar Association will suggest. Usually they are right about it, because so many foolish things have been suggested by the Bar Association that the Legislature could not follow. If we do undertake to have any activity at all behind it, it will defeat the bill. They are afraid of us. I do not know whether they know us or do not know us.

Mr. John M. Slaton, of Atlanta: I second Mr. Park's motion.

Judge Powell: I would move to amend that to the extent that copies of this be furnished to outside applicants, if desired. I want to say that this bill is not a bill which has been recommended by this Association, and it is not the bill proposed by Mr. Massie, the Chairman of the Uniform Laws Committee who spoke here last year. We studied the bills in a number of States. If we had had that uniform bill, they would have turned it down. It was wholly unsuited to Georgia, and entirely too technical to work practically anywhere in the United States, unless it was in Massachusetts, or some of those States capable of working under a technical system. Anything the clerk can now do he can do under this act. I wanted to say that much about it, for your benefit when you come to study the bill.

The Secretary: Suppose we print one thousand copies. That will supply the membership and others. I will amend my motion to that extent.

The amended motion was then put to vote and carried.

(For the Report of the Commission as printed and distributed under this motion, see page 313.)

Judge Powell: Mr. Douglas, the Chairman of the Reception Committee, asked me to make an announcement about the boat ride. The boat will leave the municipal dock just below here at 2.00 o'clock, Standard time, 3.00 o'clock Savannah time. And where do we go, Mr. Douglas?

Mr. W. W. Douglas, of Savannah: We will have to depend on the tide as to where we will go. We will get back though in time for supper. There will be lunch served on the boat.

Judge Powell: We will get back in ample time for any one who wants to go back to Atlanta to-night to get supper and get the night train from Savannah. Lunch will be served on the boat immediately after getting aboard. Those of you who cannot wait until 2.00 o'clock to eat luncheon can eat it at the hotel.

Mr. Douglas: We will not go outside of the three-mile limit. I can state that definitely.

Judge Powell: If you want anything else than the lunch, you will have to take it with you, as the boat is supplied with nothing but water.

The President: Next on the program is a symposium on the appellate courts. The first gentleman we will hear from is Mr. Alex. C. King, of Atlanta.

Mr. Alex. C. King, of Atlanta: Mr. President, Gentlemen of the Bar Association, Ladies and Gentlemen: There is a statute in the State of Georgia, which defines a crime known as the crime of carrying concealed deadly weapons. We have had before us yesterday some gentlemen who spoke very eloquently on the subject of the enforcement of law, and yet I noticed that a great many of them came before this audience and immediately violated that statute by drawing from their hip-pockets concealed and deadly weapons (manuscripts) which they fired upon this unprotected audience. Now, while this is a weapon loaded with lead, I take credit to myself that I have presented it in the open, and I

am not, therefore, guilty of the crime of carrying a concealed weapon. With that preliminary I will proceed to fire upon the audience. (Laughter.)

(For Mr. King's paper, see page 201.)

The President: The next paper on the Appellate Courts is that of Mr. A. A. Lawrence, of Savannah. Is Mr. Lawrence in the hall?

Mr. Lawrence came forward and read his paper.

(For Mr. Lawrence's paper, see page 217.)

Judge A. G. Powell: The other paper of this symposium, prepared by one of the ablest members of the Georgia Bar, one who has served his State at Attorney-General, is that by Mr. Warren Grice. Mr. Grice is unavoidably absent, but his paper is in the hands of the Secretary. I move that that be included as a part of the official report of this meeting, but on account of the lack of time that it be not read at this time.

This motion was seconded and carried.

(For Mr. Grice's paper, see page 222.)

Judge A. G. Powell: I want to offer a resolution pertinent to this particular discussion, which I prefer not to get into the maelstrom of Mr. Alston's resolution:

BE IT RESOLVED, That it is the sense of this body that it would be greatly to the interests of the Courts, the parties, and the public, if the Supreme Court and the Court of Appeals would adopt a rule requiring the submission of cases on printed abstract and counter abstract and briefs, in general outline conforming to the rule prevailing in this respect in the United States Supreme Court and in most other American Courts of Review; and that the Court should not have occasion to refer to the record except in case of conflict in the abstracts; and we urge the adoption of such a rule.

Resolved further, That a copy of these resolutions be transmitted to the Supreme Court and to the Court of Appeals by the Secretary of this body.

I want to say in regard to this resolution that this is a question to which I have given great study recently. I speak on this question like an ex-convict would upon reforms of the

penal system—as “one on the inside looking out.” I believe that if the Supreme Court would put itself in line with other American Courts on this question, it would hardly need further relief, so far as the Court itself is concerned, from the General Assembly or the Constitution. I do not believe in the record being printed—while the United States Supreme Court requires a printed record, most State Courts do not—but the Court should not be allowed to read a record. Nothing is so confusing to a Court as to be required to read a record. The Court ought to get its case from the statements of counsel who have prepared that case and know what is in it, and not by the imperfect picture presented by any record.

I recently prepared a case in the Supreme Court of the State of Arkansas, which has been referred to as a backwoods State in this body. The facts themselves in this case could not have been stated in less than one hundred pages. Being plaintiff in error I prepared the abstract, and after it was submitted the abstract of the plaintiff in error was adopted. The Court has the case stated right down to the last analysis. Then you follow with a statement of your points and citation of your authorities and the whole thing is before the Court. The United States Supreme Court could never get through if they did not have that system. The Court, counsel, and the public are better satisfied. In view of the fact that the General Assembly is so reluctant to pass any bill that does not relate to prohibition or some kindred subject, I am sure it would serve a good purpose if the Court would adopt these rules. And I believe the Court would receive that suggestion with better grace than the General Assembly receives suggestions from this Association.

Judge S. B. Adams, of Savannah: Does the Supreme Court of the United States require an abstract?

Judge Powell: Yes, sir.

Judge Adams: Under a new rule?

Judge Powell: No, sir, the method established is, first, a statement of the case, then statement of points relied on by

plaintiff in error with reference to transcript, and citation of authorities.

Judge Adams: A statement of the case, and then the points you wish to make in the brief. In some courts of review the abstract is used some, and sometimes a statement of the case.

Mr. S. H. Sibley, of Union Point: Your statement of the case does not bind the other side at all.

Judge Powell: It does bind, yes—this abstract to which the Justices all have access.

Judge A. W. Cozart, of Columbus: The new rules of the Supreme Court make it binding in equity cases.

Judge Powell: If you will notice, I drew this resolution in language broad enough to allow the Supreme Court considerable discretion, so that they could put into practice what prevails in most of the States and the United States.

Mr. R. C. Alston, of Atlanta: I second the motion of Judge Powell.

By request the resolution was re-read.

Judge Adams: Is it not unnecessary to refer to the United States Supreme Court, which does not require any abstract at all? You start out with your statement of the case, which may be very short indeed, but I have never heard in my limited experience of any abstract. The abstract is all right, but the resolution might mislead by its reference to the Supreme Court of the United States.

Col. A. R. Lawton, of Savannah: The Supreme Court requires no abstract at all. Simply leave out the reference to the Supreme Court of the United States.

Judge Powell: I have made them myself; I know what I am talking about, but I will strike that from the resolution.

Mr. Z. D. Harrison, of Atlanta: I suggest that you strike the words "counter abstract," and put in, "abstract properly authenticated as the Court may direct."

Judge Powell: I think the rule of abstract and counter abstract is better for this reason: the counter abstract not only brings forth questions of disagreement, but calls for omis-

sions. The object is this: the plaintiff in error might state only so much of the record as he thinks necessary to a clear understanding of the case. The other side might not agree to that, and might want something more.

Mr. Harrison: That might be covered by providing that the Court may provide for such authentication of the abstract as is needed.

Judge Powell: I am not trying to limit the Court at all. The resolution says "in general outline conforming to the rules prevailing," etc.

Mr. Harrison: If it does not imply any limitation on the power of the Court, it is all right.

Mr. R. C. Alston, of Atlanta: I desire to offer an amendment to that resolution. While the resolution is all right, it ought not to imply that the bar is unwilling to submit to any further exercise of the power of the Court in the premises. I want to suggest an additional paragraph to this effect:

Be it Further Resolved, That the Supreme Court and Court of Appeals be requested to exercise further their powers to make rules, so that the exigencies of business may be relieved, and that it is the sense of this Association that the bar of the State should cheerfully submit thereto."

Judge Powell: That comes in as another section. I accept it.

Mr. L. Z. Rosser, of Atlanta: I have got a profound conviction that the bar will approve of these rules. The difficulty you are going to have is that the Legislature will legislate every rule out of existence as soon as it is made. I do not want to prognosticate about what the Georgia Legislature would do, but I think the Supreme Court ought to take the risk. Let the rag-tags turn you down, if they want to. I want something done. I have profound respect for the Supreme Court, and I do not wish anything I say to be construed to the contrary, but our appellate jurisdiction, as now exercised under the burden and stress under which it now labors, is a farce pure and simple. You talk about arguing a

case, and throw fifteen hundred records at a crowd of men, why, they cannot read them! They cannot take argument; they say they cannot; I think they can take argument and get along better. They think, when I argue a case, that I befuddle them, and I think that is true individually. But I think Judge Adams could enlighten them, with a fair chance to do it. As it is, however, it is perfectly farcical. I know I would not say a word against the Supreme Court; but when you dump this lot of stuff, *ad nauseum*, on them, and they cannot hear argument, their thinking apparatus is absolutely deprived of air. That is the truth about it. Anybody who has got any sense knows it. You take a record as thick as my stick here and furnish it to the Supreme Court—a record that it will take them three weeks to read—and they cannot do it, and they do not do it. They are great lawyers, but they are not demigods, and this thing ought to be changed. I am looking at Judge Lumpkin and he is looking at me as crabbedly as if we were not both down here at Tybee, where there is no law or order, as I understand. (Laughter.) There is no danger of being in contempt down here, and I am going to be just as “contemptible” as I can. You talk about sending to any set of men on earth fifteen hundred records as thick as that stick and expecting them to give anything but memorandum decisions! It is expecting something beyond human possibility. Memorandum decisions are what they are giving us, and they are obliged to do it. It does not do any good except that it keeps those gentlemen from committing suicide. Memorandums! It is rot! It is foolishness! Why print the stuff? What’s the use of it? Absolutely none in the world. Now, Judge, put me in jail as quick as you please, because I have been as “contemptible” as I could.

Take a lawyer who has studied his case five weeks or five months, and knows more about it than any judge—and they pass an order down saying, “We do not want to hear a word from you about it; nothing you know about it can do us any good; send it to us in its rough shape just as you have

got it; do not trim it; do not give any information about it; hand it to us." Why, the rot of it is disgusting!

But they have got to do it. I have no criticism of them for it. A Judge of the Supreme Court showed a friend of mine a record as thick as that stick in print, and said to him: "I have got to decide this case next Friday." Said his friend: "Do you have any idea you can read that stuff in that time?" "I have not," was the reply, "I never expect to read it." (Laughter.) My admiration for the Supreme Court grows hour by hour, and my wonder grows that they can take the stuff that we send them and without argument turn out the decisions they do. I know most of us cannot argue with very much sense. Judge Powell and I cannot, I know. Judge Powell cannot start to talk on a subject, and I cannot quit when I start. Judge Powell starts to say one thing and says three others. I start to say some things and I never finish. We cannot aid them much by argument; but there never was a Court with brains enough to take the miserable stuff we send them without argument, and make decisions out of it. They will make memorandum decisions, with their miserable worthlessness, but I do not believe that they can hide in their rooms and take the miserable stuff that we send them and work it out with nobody to tell what is in it. It is impossible to do it. There is no trouble about deciding the cases. The trouble is to get a case down so they do know what is in it, not in trying to decide it after they find what is in it. There are not ten per cent. of them that ever have anything new in them. They are old questions rubbed up again, practically no new questions in them; but the Supreme Court is a crowd of great men sitting back getting rid of the rust and dust in these cases instead of letting the lawyers get rid of it in argument. You will never get any relief until you quit it. Now I know I'll never win another case in the Supreme Court while I live. I know that, but I have got it out of my system anyhow. (Applause.)

Judge Powell's motion was then put to vote and carried,

with the reference to the United States Supreme Court left out.

The President: Next come Reports of the Committees. First is the Report of the Committee on Legislation.

(For the Report of the Committee on Legislation, see page 296.)

The President: Next is the Report of the Committee on Interstate Law.

Judge J. H. Merrill, of Thomasville: The Report of the Committee on Interstate Law just calls attention to the fact of what has been included in these reports year by year, and that Georgia has never paid any attention to the work of the National Conference on Uniform State laws. It also calls attention to the fact that the Commission from Georgia has never made any formal report to the Governor or Legislature. So it is the impression of the Committee that the State is not well informed—and instead of the State I should say, perhaps the members of the Legislature—as to what has been done by that Conference, and to what extent its work has been adopted by the other States of the Union. So we have appended to our report a report of the Commission on Uniform State Laws, the Commissioners being General P. W. Meldrim, Hon. T. A. Hammond, and myself, which we want to ask the Association to have printed — perhaps three hundred copies — some time as soon as possible, so we can send them to the members of the Legislature. That report can be printed on four or five pages of our report, so that it will not be expensive, and it includes a brief statement of the work of the National Conference.

Mr. L. Z. Rosser, of Atlanta: What is it about?

Judge Merrill: It is just a history of the work of the National Conference. We have been conferring about some proposed uniform State laws. The Negotiable Instruments Act has been adopted in forty-seven of the forty-eight jurisdictions. The Warehouse Receipts Act has been adopted in thirty-five or thirty-six of the jurisdictions. So there is a num-

ber of other acts, that have been adopted to a greater or less extent in other States. If Georgia wants to be entirely alone, it can stay so, but the Legislature should know what the situation is elsewhere. At the Conference last year a Committee was appointed to get the adoption of approved acts. While I was not there when that was done, I want to make some showing about performing our duties. I want the Association to print enough copies to furnish the Governor and the members of the Legislature with that report, and I so move.

This motion was seconded and carried.

(For the Report of the Committee on Interstate Law, see page 297.)

Judge Merrill: It has been explained before that the State makes no appropriation towards the expenses of the National Conference, which are about \$2,500. This Association for the past two or three years has made a special appropriation of \$100.00 to help pay those expenses and I move that that sum be appropriated this year as usual.

This motion was seconded and carried.

The President: Next is the report of the Committee on Legal Ethics and Grievances.

Mr. R. D. Meader, of Brunswick: I submit my report with a request for leave to print. It has already been filed with the Secretary.

(For the Report of the Committee on Legal Ethics and Grievances, see page 303.)

The President: The Committee on Membership has reported from time to time. So we will not ask for a formal report from that Committee.

Next is the report of the Committee on Memorials, Mr. R. L. Berner, Chairman.

Judge A. G. Powell, of Atlanta: That report together with the memorials will be filed with the Secretary, including the memorial of Judge Lamar.

Mr. T. M. Cunningham, of Savannah: Mr. President, in that connection, I wish to offer the following resolution:

RESOLVED, That the memorial presented to the Supreme Court of Georgia through Maj. J. C. C. Black, commemorative of the life and character of Mr. Justice Joseph R. Lamar, be published in the next Annual Report.

Mr. R. C. Alston, of Atlanta: May I suggest an amendment, that the memorial presented to the United States Supreme Court also be embraced in the report?

The amendment was accepted, and the resolution, as amended, was carried.

(For the Report of the Committee on Memorials, see page 237.)

The President: The President is required to appoint a Committee on Legislation, and also delegates to the American Bar Association, and I will make these appointments now as follows:

Committee on Legislation:

Samuel B. Adams, Savannah.

L. Z. Rosser, Atlanta.

Sam S. Bennet, Albany.

Delegates to the American Bar Association:

T. A. Hammond, Atlanta.

J. H. Merrill, Thomasville.

Judge S. B. Adams, of Savannah: The appointment of the first man named on the Legislative Committee is not felicitous. I do not think that I would be a good man for a thing of that sort, if I am for anything else. I do not think that that would suit me. Mr. Rosser is an old hand at things of that sort, and I have no doubt a most valuable man, but, if you could appoint my junior in my place, I am sure it would be better for the work of that Committee.

Mr. L. Z. Rosser, of Atlanta: On the line of personal privilege I want to say that I do not think that the Legislature would pass anything that I would recommend, and anything that they would pass would not be worth passing. Therefore I ought not to serve.

The President: The Committee will stand as appointed.

The gentlemen can appeal from the decision of the President, if they desire.

Judge A. G. Powell, of Atlanta: The next on the program is Resolutions. Are there any resolutions that will not provoke discussions to be presented before the Alston resolution is considered?

Mr. T. M. Cunningham, of Savannah: I would like to offer this resolution:

RESOLVED, That the Association has heard with regret of the indisposition of Hon. Walter G. Charlton, Judge of the Eastern Judicial Circuit, and has missed his pleasant companionship at the meeting, and hopes for his speedy recovery, and that a copy of this resolution be sent to Judge Charlton by the Secretary.

This resolution was adopted unanimously by rising vote.

Mr. Z. B. Rogers, of Elberton: I wish to offer this resolution:

RESOLVED, That this Association condemns the custom of calling lawyers "Colonel," and urges each member, the press, and the public to do all they can to put an end to it.

Mr. L. Z. Rosser, of Atlanta: I would like to have a penalty attached to it, so that anybody who does it would be punished.

Col. A. R. Lawton, of Savannah: I would like to include in that resolution all other honorary titles. I would like to have eliminated the title of "Judge," as applied to county commissioners, justices of the peace, ordinaries, and sundry other people. I would like for that resolution to be comprehensive as to the general misuse of titles.

Mr. Rosser: I would like to add to that a suggestion that there be a committee to decide what men sitting on the bench should not be called "judge." I want somebody to punish some men I know for being called "judge."

Col. Lawton: I hope the Association will take this seriously. I am a Georgian bred to the soil, and I am proud of the State of Georgia. I am sensitive about anything that can be said

against the State of Georgia when it is well founded, and I am particularly sensitive to anything which justifies ridicule. We are making ourselves ridiculous by the unauthorized conferring of titles upon everybody. The most flagrant instance of it is the conferring of military titles based on membership of the bar. I would like to give this Association an incident which, I think, shows the extent to which the thing has gone. I was on riot duty at a town in South Georgia where Court was being held. An officer of one of the companies came to me, and said that he understood that I had issued an order that the soldiers should not go up into the court-room while the cases were being tried. I said "yes." He said, "I have two privates in my command, for whom I should like to get permission to go into the court-house; they are young lawyers and want the experience." I said, "Who are they?" He said, "They are 'Colonel' Brown and 'Colonel' Robinson." (Laughter.)

I read in a Savannah paper a dispatch from Waycross some time ago saying that "the friends of 'Colonel' John W. Bennett are very much pleased at the promotion which has come to him by his election as second lieutenant of the Waycross Rifles." (Laughter.) It is funny, but it is ridiculous.

I can remember my own mortification once, because I am one of those afflicted with a title. I went into the White House one day with Senator Bacon, who introduced me to Mr. Norton, the President's Secretary. With his uniform courtesy the Senator said: "Mr. Norton, Colonel Lawton is a real Colonel." "Certainly," said Mr. Norton, "he is from Georgia." I do not know how you feel, but that does not please me. I do not like it. I am sensitive about it, and I think the entire State of Georgia ought to be sensitive about it. We are making ourselves laughing stock, and I think it is time that this Association should pass a resolution strongly condemning that practice, and vote for it seriously.

Judge J. H. Merrill, of Thomasville: I knew an incident that happened in a county in the Southern Circuit some years ago after Judge Mitchell went on the bench. The visit-

ing lawyers had a way of calling each other "Colonel." They spoke of each other as "Colonel Brown" and "Colonel Jones" and "Colonel Johnson" and "Colonel Jackson." They never spoke of each other in any other way. One day "Colonel Jackson" was not in his place (that was not his name, but we will call him Jackson), and the court directed the sheriff to call Mr. Jackson. The Sheriff went out in the hall and called "Colonel Jackson! Colonel Jackson!" The Judge called him back and said, "Mr. Sheriff, I told you to call *Mr.* Jackson. I am going to reduce everybody to ranks around here." I think that served a good purpose, for I did not hear them calling each other "Colonel" for several years after that. I think the adoption of this resolution may save us from this practice all over the State, and I heartily favor it.

The resolution was then put to vote and unanimously carried.

Mr. E. T. Moon, of LaGrange: Mr. President, I rise to a question of information. I do not understand what was done with Judge Powell's resolution. I did not hear it voted on.

The President: It was adopted, sir.

Mr. R. C. Alston, of Atlanta: Mr. President, am I in order?

The President: I do not know whether you are or not, sir.

Mr. Alston: The matter involved in the resolution, which I had the honor of presenting on Thursday,* is one of great importance and should be treated as such. It is one that lies very close to my heart and one that I desire very much to have this Association seriously consider and adopt. It is not a question of universal suffrage, and it is not a question of equality of suffrage. The proposition simply is that we recommend to the Legislature of this State the enactment of such laws as may be necessary to permit women to be admitted to the bar upon the same terms as men are admitted.

Now, we permit women to do a great many things. They may sew; they may cook; they may nurse; they may be sales-

*The resolution referred to is the resolution in regard to the admission of women to the bar. For the resolution and the previous discussion of it, see pages 12-15.

women; they may be clerks; they may be stenographers; they may be our greatest companions and our best advisers; and yet for some reason this State is one of three out of the forty-eight that do not permit them to be members of the bar. You may find it necessary for your daughter to go out to earn a livelihood when misfortune has overtaken the family. She goes into a law office with the assurance that she may be a clerk, and with the further assurance that the laws of the State say she shall be no more, and that simply because she is a woman, without regard to character, without regard to education, without regard to ability. Side by side with her there may be another clerk, who enters that office at the same moment. He has little of character, little of ability, little of learning, but by becoming twenty-one years of age, and standing an examination, that man, simply because he is a man, may reach heights which are denied to that woman. You may teach that woman clerk through the years of experience to be a good pleader; she may learn to be a good lawyer; she may be able to consult with your clients; she may be able to draw declarations; she may be able to keep up with your court calendars; she may be able to pass on titles; she may be able to give every kind of advice; but simply by the *ipse dixit* of this State, as one of three remaining States, she can not reap the reward of it. When this woman clerk, who by reason of her efficiency is capable of giving advice to your clients, does so, the confidence is not protected by that law which protects the relation of attorney and client.

Mr. L. Z. Rosser, of Atlanta, interrupting: No, you are wrong, Bob. The clerks are protected as much as the lawyers.

Mr. Alston, continuing: If that is so, as Brother Rosser tells me, it is proof of the fact that she ought to be protected, not only as to the confidences received, but she should be permitted to receive those confidences as an attorney, and receive some of the rewards of her proficiency.

Women from all of the other States of the Union save this State and West Virginia and Arkansas may be admitted

to the Bar of the Supreme Court of the United States, and may plead and practice there, but every woman, who lives in this State, is denied that privilege. What is the argument for further denial of it to her? What reason is there for it? Is it the fact that there is to be competition? Is it the fact that a profession which is noted for its generosity shall be ungenerous to those who are such enormous factors in our civilization and in the uplift of us all, in the actual conduct of the profession? There is scarcely a city law office that has not in it one or more women clerks. They came there, many of them, from the country. They came there because of the necessity for their coming. Those who come to the cities, come because of the necessity of making their livelihood. They do not come simply to do the work—to do a man's work. They come because civilization forces them to do that kind of work, and still we say to them, "We recognize that our civilization, which we have been such potent factors in making, forces you out to make your livelihood, but we withhold from you the power of progressing except as a clerk." Is that just? Is there any reason in it? Can we longer lay claim to being a generous profession and withhold from them that kind of reward?

Now it is not by any means to be taken that all women want to be members of the bar any more than that all men want to be members. There is but one lawyer to every sixteen hundred people in the State of Georgia. There is no reason to believe that the proportion will be greatly increased if we permit the women to be admitted to the bar. There is no reason to believe that there will be any more failures amongst the women who come to the bar than there are amongst the men. There is no reason to believe that there will be any more of bad character at the bar with women there than with men. There will be no more of bitterness amongst them in their fights at the bar than there is amongst men under the same conditions. There is no good reason for it save precedent,—save the fact that it has not been done heretofore. But we forget that the civilization which confronts

us has grown about us. It was abhorrent twenty years ago to think of women working to the great extent that they work now. We did not know that time would press them into service and work to the extent they have been pressed now. There is no need of judging this question by the ideas of a quarter of a century ago, but it is to be judged by the conditions as they are, and as they are made by the civilization of the present day.

I trust very much that the gentlemen of this Association will recognize our debt to the women, will recognize the conditions which confront us, will recognize that there is need oftentimes of women going into service and competition with men, and that, when they do go into that service, and are forced into that competition for the purpose of making their livelihood as you and I do, they should go into it upon terms of equality.

This Association owes more to women than any other organization within my knowledge. I think, except for the delightful companionship of these splendid women, whom we see here to-day, these meetings would be failures, and during the time, which I have attended them, this is the first request which I have known to come in their behalf—

Mr. L. Z. Rosser, of Atlanta, interrupting: It has come every year for the last four or five years.

Mr. Alston, continuing:—and I request you to treat it fairly, and vote upon it as a present day question.

Judge A. G. Powell, of Atlanta: I think all the time that they talk in the court-house ought to be taken off of the time that they talk at home. (Laughter.)

Mr. J. B. Harris, of Macon: Is the resolution introduced by Mr. Alston as a member of the Bar Association, or simply at the request of the Federation of Women's Clubs?

Mr. Alston: As a member of the Bar Association.

Mr. Robert W. Barnes, of Macon: Is it not true that within the nine years that Missouri has licensed women to practice law there have been only four women licensed, and

in Alabama only two, and in South Carolina only one, in four years?

Mr. Alston: I do not know, but the four of Missouri, and the two of Alabama, and the one of South Carolina, if they desired to be admitted, ought not to have been denied that privilege.

Mr. Barnes: Do you think that if, out of a population of eight or nine millions, there are eight or nine women admitted to the bar, the others proportionately suffer from not being admitted?

Mr. Alston: That shows that by adopting the resolution we will certainly not do much harm at any rate. (Applause.)

Mr. L. Z. Rosser, of Atlanta: That is the only thing I have heard in favor of it.

Bob says this is near to his heart. It is, eh? Ah! that is the women speaking now; Bob does not care anything about it.

Now, this notion that women have got to do everything a man does is all miserable tommyrot. I never would be a success as a mother. I would be a dead failure. Of course I cannot tell absolutely as my possibilities are great, but I believe as a mother I would be a dead failure. (Laughter.) But I know a little woman up home who is a brilliant success at it. And she is not fit to be a lawyer any more than I am fit to take her place. That's the mistake you are making.

My! My! You women rule the earth and rightly so. You pass us all. We have not a thought of our own. The female voice at home rules the earth, and it is potential as long as it stays there; but when it begins to sound in the arena, it is a squeak that is absolutely disgusting. That is the truth of it.

And those of you who advocate woman's entrance into the arena have not perhaps half the respect practically that I have for her. I love her as I love nothing else on this earth. There is not another thing on this earth that holds the planet together. Woman has made civilization; she has maintained morals; she has maintained decency; she has maintained and by her presence makes this earth habitable; but the very second she undertakes to be a man that very second she will

proceed to undo all she has done and render herself impotent for the future.

Judge Branham says equalize everybody; let them practice law; let them do everything a man does; there never was a greater heresy preached. We are maintained and kept in decency by the gentle voice and example of the womanly woman, and in no other way. It is rot to talk about the contrary. I tremble when I think that every woman should be a man. When she becomes a man, that gentle reverence, that gentle fear, that gentle respect for all that is refined and beautiful in her, is all gone. For men I have no respect whatever, except for the judges when they are sitting on cases, and that is only temporary. (Laughter.)

You talk about practicing law and voting and all that—why, you own the earth, and you do not know it! You own every community in Georgia, and you do not know it! You control everything, and you want to give it away “for a tinkling brass and a sounding cymbal!” That is all it means. That is the truth.

Own me? Why, a little woman has got a string around my neck, and I am the greatest fool dog that goes around the streets, when she is leading, and she can lead me as long as she stays at home; but the moment she undertakes to vote and practice law and do militia duty and work the roads, she has lost every bit of the respect I have got for her, and I would run amuck quick.

Col. A. R. Lawton, of Savannah: I want to offer an amendment to the resolution, or a substitute for it: Resolved, That the Georgia Bar Association, firmly convinced by Mr. Rosser's argument, and in order that there may be no inconsistencies in the law, which now provides that woman is denied admission to the bar, advocates legislation by the General Assembly as soon as possible, denying to her all other useful and remunerative vocations, including the practice of medicine, architecture, editing of newspapers, and any other means, by which she may take “her place in the sun” without the assistance of man. (Applause.)

Mr. Rosser: Did you understand that I was through, or do you mean to interrupt me?

Col. Lawton: I understood that you were through.

Mr. Rosser: Well, I am not through, Colonel — and I am going to call you "Colonel" all the time, because you interrupted me. A man who makes that sort of an argument ought to be called "Colonel."

Judge Joel Branham, of Rome: Well, do you ever expect to get through? (Laughter.)

Mr. Rosser: No, sir, with that sort of argument from the "Colonel," and your talk, I am never going to finish. It is strange, but whenever you begin to make an argument on this line it is like trying to attack prohibition. You cannot say a word unless some man undertakes to make your argument ridiculous.

I regret that any woman on the earth has got to work. I am sorry she has got to be an architect. I am sorry she has got to be a newspaper editor; I am sorry she has got to be a clerk; I am sorry she has got to be a stenographer in a lawyer's office (and I have seen some of the best there ever were there); I am sorry for it all. I wish we men had character enough, brawn enough, brain enough, and energy enough, to support the women of Georgia without work. I never saw the minute in my life, when any woman close kin to me could do it, nor will she as long as this right arm retains its present strength and whatever intellect I have retains its present cunning; because I know, and you know, and every man that hears me knows, of the harm that comes from women mixing and mingling with the common throng in the market places. You know it. You can say you do not as much as you please, but every man knows it. You may as well undertake to roughly handle the tender rosebud day by day and not rid it of its bloom and blossom and beauty, as to talk about a woman taking her place in the market-places, and losing none of her gentleness and none of that lovely womanliness which has made you a man and which has kept me from the gutter. (Applause.)

Gentlemen, let us not open up the gap. Let us not encourage the evil; for it is an evil. Instead of undertaking to open up further places for her to work, let us in gentleness, and in kindness, let us in love of home and native land, let us in God's name keep the need for her to work as low as it can be kept, and let us not encourage it. In common with other men, I say all honor to the woman who works if she has to. But that the necessity exists for her to work is to be condemned—I will not say condemned, but commiserated.

Oh! my friend, Bob, I know him—and the "Colonel" jumped on me—I have not got over that humiliation yet, and I will call him "Colonel" till I die now. (Turning to Colonel Lawton.) I think I'll call you "General," and I do not know but that I'll call you "Major."

Col. Lawton: My punishment, sir, is greater than I can bear. (Laughter.)

Mr. Rosser: Well, Mr. Lawton, I apologize to you. Let's let it stay where it is, gentlemen. But I do not care if it does come. I tell you what is a fact—I do not think I am a member of a profession so great that I am afraid somebody is going to break in. I have studied it for thirty-six years, and I wish I had never heard of it. I wish I had sense enough to do something else. I wish I did not know about its bickerings, its hard and rough places, its strife. I wish I did not know its disappointments; I wish I could have escaped the misery I have got out of it myself, because as a profession I think it is the hardest job in the world; there is less honor in it; less money in it. You make other people rich and you die poor. You keep men in standing, and you get all the blame, if you defend a guilty man and he is turned loose, and likewise all the blame, if you defend an innocent man and he is convicted. If I had had brains enough to do something else, I would have done it, and I do not want to get any of these ladies into it. If you think that I am afraid that some of them are going to get into it, I'll tell you I am too old to be afraid. I am like old Ajax and Achilles; my race is run.

But, my! my! that is not it. Let me tell you, I never saw

a woman in my life, who had a purely logical mind, that ever had a loving husband, and she never will have. Suppose I had to marry a woman who was studying astronomy and calculating the parallax of the stars, or maybe talking about logarithms—God bless your soul—how could I sleep? God bless you, my friends, it is out of your line. You have not got time to practice law. Practice on your husbands. "Suppose they have no husbands?" somebody says. Well, they need husbands, and all of them should get one. What is the use of a woman without a husband?

After all, my friends, some of these times the whole thing will be ended. The great reaper we call Death settles all of our little quarrels; it settles all of our little difficulties; it settles all of our little differences. The man or woman who can lie down and say: "I am satisfied that the world is better because I have lived a decent, upright, kindly life, doing what good I could as I went along," after all wins the greater victory, whether he was ever much of a lawyer, or she ever a lawyer. What of gentility? What of character? What has the world progressed because we have lived in it?

If any of you ladies want to be admitted to the bar, I move that we consider you separately; but remember, if these were in the majority, you could play cards on my coat-tails as I went down the street. (Laughter and applause.)

Judge A. W. Cozart, of Columbus: Mr. President, and Gentlemen of the Bar Association: I intended to go home yesterday, but I stayed over to hear Mr. Alex. King's paper on the Supreme Court. I expect by the time I get through you will wish that I had gone home.

I wish to say whether you ladies, who desire to become lawyers, are admitted to practice law, or not, you will repent it. (Laughter.) In the language of Sir Roger de Coverly, "Much might be said on both sides."

It has been said that a man is only conspicuous three times in his whole life. The first is when he dies, and then he is completely lost sight of in the inquiry as to what he left by his last will and testament; the second is when he marries, and

he is completely and absolutely lost sight of in the inquiry as to what his bride's trousseau was; and the third is when he is born and then he is completely and absolutely and irretrievably lost sight of in the inquiry as to whether it is a girl or a boy. (Laughter.)

The old German Shopenhauer used to say that he did not like women because they were long of hair and short of thought. (Laughter.) The Chinese had a proverb that a man thinks he knows and a woman knows she knows. (Laughter.) The Japanese have a saying that a woman with a tongue three inches long can kill a man six feet high. (Laughter.) You will also remember that our good old English friend, John Milton, said that he did not teach his daughters the languages, as one tongue was enough for a woman. (Laughter.) Then came the naughty American, who said of woman, that when her mouth is in repose, it shows her character, and when it is not in repose, it shows some other woman's character. (Laughter.)

Now I do not say these things about woman. This is what I say of her:

Her voice is sweeter than
The violin, the guitar, or the flute;
The piano, the banjo, or the lute.
She is more beautiful than
The daisy, the dahlia, or the violet;
The fuchsia, the lily, or the mignonette.
Her love is more precious than
The diamond, the emerald, or the ruby;
The topaz, the sapphire, or the chalcedony.
She is the angel of earth and the queen of nature.

(Applause.)

Max O'Rell says that in France the husband and the wife are partners—they go along side by side; in England, the husband goes along before, and the wife follows him along behind; but in America, the wife goes along before and the husband tags and lags along behind. In America, every woman has a royal arch under which she may pass.

The highest, the noblest and the most sacred field of labor for woman is not at the bar, but her highest and noblest

work has for its object and end the perpetuation of the human race. I am, therefore, opposed to women practicing law. (Applause.)

Mr. Joseph Ganahl, of Augusta: It seems to me that there has been a little misconception of the issue here. If it is proposed, as these gentlemen seem to think, that women shall be dragged up to the bar, and coerced into the practice of law, then I am against it. I do not understand that any woman is going to be obliged to her leave her family or to stop her cooking or to leave her sewing; but, unfortunately, what is she going to do, though we shudder at the suggestion, when there is nothing to cook?

Mr. L. Z. Rosser of Atlanta, interrupting: Is there any other profession, that offers less remuneration for the same amount of intelligence and labor than the law? If there is, I want to find it.

Mr. Joseph Ganahl, continuing: I do not know whether there is or not. I do not think, however, that that touches the question we are discussing. Nor does it affect the matter whether there are five or ten or ten thousand women who want to come to the bar. The point is, if there is one woman who ought to be at the bar, she ought to have the right, not as a matter of generosity, not because we are liberal people, but as a matter of simple justice, and because she is a member of the human race; that is all. It is not a question of conceding a privilege; there is no question of that sort. It is a question of common honesty; of common right and wrong. There are many of them who are not going to the bar. There are many of them who do not want to be at the bar, and ought not to, and will not, be there; but, if there is one whose attitude and position is such that it is proper that she should go to the bar, then I say as a matter of common honesty and justice, let her do it.

Mr. John M. Slaton, of Atlanta, interrupting: You think they should be eligible to be judges?

Mr. Ganahl, continuing: Certainly.

A Member, interrupting: And sheriffs, too?

A Member: The resolution is that they shall be admitted to the bar.

Mr. Slaton: If you are going to make them lawyers, they ought to be eligible to be judges of the Supreme Court.

Judge A. G. Powell, of Atlanta: Do you not think that a large percentage of our profession are not gentlemen now? (Laughter.)

Mr. Ganahl, continuing: Yes, but that question has suggested one other remark in this connection. The moral attitude of the bar, while I think perhaps we should not say we are ashamed of it, as a general proposition is not any too high, and it is not going to be lowered any by the moral influence of such women as may choose to join our ranks. Not only should women be admitted to the bar as a matter of justice, but they should be admitted to the bar for the sake of the bar, and for the sake of the moral influence that they would exercise there. Their influence now is not confined to the home. Why, I doubt if there is a man here in this pavilion, who to-day undertakes to run a law office without a woman to help him do it. If there is, he is on the wrong tack.

Mr. L. Z. Rosser, of Atlanta, interrupting: We do not run a home without a wife, but we do not make her the man.

Mr. Ganahl, continuing: Yes, but in the office she cannot sign the papers she composes, because the old common-law idea that a woman is a chattel is still stuck in the back part of the heads of some of us, and we have not yet realized that woman is no longer a chattel, but is rapidly becoming a member of the human race.

Mr. P. C. McDuffie, of Atlanta: I heartily endorse the resolution of Mr. Alston. It seems to me that the proposition might be summed up in this way. It is a well known slogan of an advertising concern—"Eventually; why not now?" It is in the line of progress. They are bound to come to it. The objections made are, first, that they are temperamentally unfitted to be members of the bar; second, that their duty is in the home. I think the second proposition has been answered. Her duty is not confined to the home. Force of

circumstances compels her to go out and work. It is a well known fact that the leaders in many other professions are women. There is a woman doctor in Atlanta who has a large general practice. She is admired by a large circle of friends, and is skillful in her work; and that is true all over the United States. Surely, if women can practice medicine, there is no reason why they cannot practice law. It is also true of architecture. It is true of a great many other professions. If they can perform a service, and do it well, they should be allowed to perform it, if they wish. There are many things in the law business that women look after, and they do so efficiently. In matters of divorce, they could advise and consult with clients better than men. The ablest members of the bar do not like to handle matters of that kind. Younger members sometimes look after those questions, and they are the most delicate things that lawyers are confronted with, and ladies could consult with women clients along lines of that kind with much better ease and grace than men could—

Judge A. G. Powell, of Atlanta, interrupting: Is it not true that most of those who are advocating this resolution are either hen-pecked husbands or bachelors who have a grouch against the sex? (Laughter.)

Mr. McDuffie, continuing: Well, I am not a bachelor, and I have hardly been married long enough to say that I am a hen-pecked husband. (Laughter.) To say that women should stay in the home seems to me to be begging the question. To picture Utopia, to bring to your attention the ideal life that women should lead, and glorify the home, is certainly begging the question, when we know of the great host of women, who are toiling in the factories and working in sweat-shops. Why come before this body, and say that the women should stay at home, and glorify the home, when we know that they are compelled by the force of circumstances every day to do service of the kind that we are doing, and do the work that we are doing, and without the same remuneration? I am heartily in favor of the adoption of Mr. Alston's resolution.

A Member: If the bar of Atlanta is in such a deplorable condition as that depicted by Mr. Rosser, I think the addition of a few women to that bar certainly would not degrade it and it might help it. It could not make matters any worse.

Mr. Alex. C. King, of Atlanta: It seems to me that this discussion has been launched upon rather false lines as to the question that underlies the proposition of admitting women to the bar. The profession of law to my mind stands in an entirely different relation to society from any other vocation in society. The idea we have discussed is that anybody has the right of admission to the bar. I deny emphatically the proposition that there is any man or woman alive who has any *right* to admission to the bar. The proposition of whether or not any person shall be admitted to the bar to practice law can be justified solely on the idea that the introduction of lawyers, and the admission of lawyers to practice law, makes for the conduct of justice — makes for the administration of justice. The institution of practicing attorneys is one of the agencies for the administration of justice. The theory of the Anglo-Saxon administration of justice is that it shall be administered through a tribunal before which one side is advocated and the other side is defended, and the tribunal sums it up and finds the truth. That is our theory of the administration of justice. If it could be demonstrated that you could administer justice better by turning every man out, it would be the duty of the Legislature to put the practice of law in the hands of women. If it can be shown that it is better for the administration of justice to put it in the hands of men, men should be required to practice law, and women prevented from practicing law.

If it can be shown by argument, as I think it can, that the introduction of both men and women into the administration of justice is introducing a disturbing element into the administration of justice, then I think it would be unwise to undertake to bring the sex element into the administration of justice. To illustrate: Suppose you had Mr. Rosser arguing a case on one side, and one of these beautiful ladies on the other.

What would become of the administration of justice? (Laughter.) That may seem to be a humorous illustration, but there is a great deal behind it. We have all seen cases tried in the court-house, where there was a pretty woman on one side, and a man like Mr. Rosser (I will not say an ugly man) on the other side, and I would like to appeal to the experience of every lawyer here as to whether the scales of justice in the hands of judge or jury under those circumstances hang equally, or balanced?

The objection I have to the introduction of women is that you are introducing a disturbing element into the administration of justice. Furthermore, the character of the work introduces a number of things which are not beneficial for women to be confronted with. And they cannot discriminate, if they go in for admission to the bar. They must take what comes. They cannot say we will take the nice cases, and we will let the bad cases go. They have got to take what comes. And for the reasons, first, that you are introducing the disturbing element of sex, which does not make for the administration of justice, and, second, that you are introducing women into a class of work, that unlike medicine or architecture, confronts them with the shame and crime and villainy of humanity, I do not believe in the admission of women to the bar.

Judge J. H. Merrill, of Thomasville: I want to say just a word in the serious soberness of mind which Mr. Alston invoked. I want to quote one brief sentence from the most distinguished woman in the State of Georgia, a woman known and admired by every person in this presence, a woman who has earned her livelihood all her long and honored life—Miss Mildred Rutherford, of Athens. She said before the Legislative Committee last summer considering the bill to give women the franchise: "The glare of public life burns out the fine qualities in woman and leaves her unsexed." I ask you, gentlemen, to consider seriously, as you vote upon this question, if the glare of the court-house, the forum, is not equal to that of public life, and if it will not leave the woman unsexed.

Judge Joel Branham, of Rome: I want to say a word. I do not propose to make a speech. I want to endorse the resolution. It is not a question of sentiment; it is a question of simple right. I think that a man and his wife should stand upon equal terms. I think that every woman should have the same rights that a man has, and that every avenue of employment suitable to woman should be open to her. There comes a time occasionally, as my brother has said, when there is nothing to cook. We are willing for her to cook, and milk the cows, wash the floors, work in the factories, and work anywhere except at the bar. I do not believe it would unsex a woman at all to give her the right to come to the bar.

I am not the man to say that I do not want to see the women working. I want to see everybody employed at some suitable vocation, whatever it may be, and give women the same right you give to men. We do not expect her to work the roads, and I have no idea that Mr. Rosser ever had such a thing in his mind. That is not the question. The question is to give her the right to earn her own living and support her own family, if necessary, and, if she wants to do that as a lawyer, let her be admitted to the bar to practice law.

The resolution was then put to a vote. Twenty-nine voted in favor of it, and forty-five against it, and the resolution was declared lost.

The President: Is there any further business to bring before the Association? If not, the Association stands adjourned until its next annual meeting.

The afternoon was taken up with a ride upon the steamer Attaquin through the inlets around Tybee Island.

APPENDIX

LAW ENFORCEMENT.

ADDRESS OF THE PRESIDENT,
GEORGE W. OWENS,
OF SAVANNAH.

The State of Georgia at present faces a crisis more severe than any that it has had to deal with since the days immediately preceding the War of Secession. At that time the minds of its citizens were inflamed with the thoughts of the wrongs which were threatened the State by outsiders, and they rose *en masse* to defend themselves and maintain what they deemed their rights.

At present the good name and fame of the State are threatened by its own citizens, who by acts of lawlessness have made the State the target for not undeserved censure. From having been a law abiding State, and one whose record was second to none in America, we have become the object of such adverse criticism that we are regarded as being in a condition of almost semi-barbarism. Outrageous murders, in the form of lynchings are of frequent occurrence, and the perpetrators of these crimes, never punished, pride themselves in their misdeeds, and deem their infamy a glory to their manhood and chivalry. The laws of the State are set at naught, and the personal judgment of the riotous mob, becomes the final arbiter of the guilt of the accused.

It behooves us, members of this Association, to see that our laws are enforced, to ascertain, if possible, why there is such general disregard of law. Our statutes for the punishment of crime are ample. Is then the fault in the enforcement of the law, are the courts inefficient, or are the officers of the law lacking in their duty in applying the law? The disregard of one law soon brings the average citizen to the belief that no law should be strictly enforced; that where a

misdeemeanor remains unpunished, a felony should have the same fate.

Of late years a wave of hysteria has gone over the State, and extremists have passed laws, sumptuary in character, but disguised under the veil of police regulation, which have not and never will have the undivided and genuine support of the masses of the people; private rights have been invaded, and resentment against the law engendered; the natural result has been that the laws mentioned have been generally disregarded, and it was but a step forward, from refusing to obey that law, to put at defiance the more important laws bearing on the well being, good order and dignity of the State.

The gravest infraction of law is that of lynching, which has unfortunately become most frequent; this form of speedy justice against a criminal, which was applied almost exclusively in cases of outrage on women, has now become so common, that a person charged with trivial crime, frequently suffers the extreme penalty for an act, of which had he been convicted by due course of law, an imprisonment of short duration would have been the appropriate punishment. How shall the perpetrators of this crime of murder be brought to justice? It is useless to attempt to indict them in the county where the act has been committed; though they are known, the grand jury will not indict, for frequently men composing that body have been either parties to the crime or are in such sympathy with the perpetrators that they disregard their oaths of office.

In a most flagrant case of lynching, which occurred some years since, in open daylight, where the perpetrators were well known, and some of them seen by the officers of the law; when an indictment was presented to the grand jury, the sheriff of the county, who was allowed to select the witnesses to be *subpoenaed*, had a large number of witnesses brought before the grand jury, who on the day in question, were in a different part of the county, which he knew, and failed to *subpoena* witnesses who had seen the crime committed, with the natural result that no indictment was found. A most

notorious case, lately happened, and which has brought the most obloquy on the State, in which the perpetrators went from the county of their residence to a distant county, seized the convict in the penitentiary,—the officers of the law who had him in charge, making no effort to perform their duty to protect and defend their prisoner; he was carried by the mob to another county, not that in which the offense was committed for which he had been convicted, and there lynched; the grand jury failed to find an indictment against the perpetrators of this gross outrage, because of lack of evidence, though it was currently reported that well known and prominent citizens of the county had composed the mob, and had been present at the final tragedy.

The present law requires that the indictment shall be preferred and trial had in the county where the crime has been committed. This law should be amended, so as to allow an indictment to be found in any county in the State and trial had in the county where the indictment is found.

In addition, a law should be passed providing that the fact of lynching should be conclusive evidence of the right to recover damages and holding the sheriff and the sureties on his bond liable in damages to the heirs of the party lynched; the trial of the suit to be had in a county other than in which the offense has been committed.

Another cause of the lax enforcement of law, is the present method of electing the judiciary and solicitors general, by popular vote. This method has been twice tried before, and found unsatisfactory. Neither a judge nor a prosecuting officer should be dependent for his office on the votes of the people, who must appear before one of them for trial, or who may have to be prosecuted by the other. However upright the officer, he is but human, and must, though unconsciously, be swayed by the bias which is naturally engendered by the knowledge of the fact of who was his friend or opponent in the canvass for his office. The farther away the officers of the law are from the popular vote, the better it is for the administration of law.

Another cause which has induced the mob to take the law into its hands, rather than have crime punished by due course of procedure, is the long delay, incident to the execution of the sentence of the law, and the frequent commutation of the sentence of death, by the Pardon Board and the Executive. Juries are not prone to inflicting the sentence of death, and when they have done so, the cases are rare, in which that finding should be set aside after final adjudication by the courts of last resort. A virile Pardon Board and an equally virile Governor of the State, refusing consistently to interfere with the mandate of the law, would by their conduct, shortly restore to the people their confidence that crime would be sternly dealt with, and that the criminal would not again be put at liberty in the community, as a continuing example of the failure of justice.

The recent prohibition law, so drastic in its regulations, unpopular with the people, will be productive of many infractions of law, for people resent any restrictions on their personal liberties. It is questionable whether it will produce more law breakers than hypocrites. The history of prohibition is that it does not prohibit, but causes increased illicit traffic in the contraband article. The improper use of liquor is vicious, its proper use is neither wrong nor harmful, but on the contrary, beneficial and salutary. Local option, high license and a limited number of places where liquor may be dispensed, in proportion to population, and strict supervision, are far better than an attempt to actually prohibit its use, which invariably fails. But the law has been passed, and it becomes our duty to assist in seeing to its being carried out and obeyed. Let it be so strictly enforced that the hypocritical prohibitionists will be unable to obtain their supply of liquor, and a revulsion of feeling in their ranks will soon bring about a sane and salutary law beneficial to the public, and which no one will oppose.

On the members of this Association, more particularly than other citizens of this State, devolves the duty of seeing

that our laws are obeyed, so let each one of us devote his best energies to the enforcement of its laws.

As when two generations ago cannons boomed from the sands of Tybee, resounding against the mountains to the North, and echoing back, informed all of our people that their liberty was at stake, every one rose *en masse* to defend assaulted rights, so now let our voices go forth from this historic ground, and, echoing through the State, from ocean sands to mountain heights, let it be known that the fair name of this great Commonwealth must be restored and law and order must prevail.

THE PROPER PLACE OF PRECEDENT, IN OUR JUDICIAL SYSTEM.

ANNUAL ADDRESS BY
HAMPTON L. CARSON,
OF PHILADELPHIA.

Mr. President and Gentlemen of the Georgia Bar Association:

Some years ago I prepared and read before my own State Bar Association a paper upon the Evolution of the Independence of the Judiciary, in which I told the story of the struggle of a thousand years. I also prepared and read a paper before the Virginia Bar Association entitled *The Place Occupied by the Judiciary Under Our Constitutional System*. Taken together and read consecutively, these papers aim at an exposition of the continuous historical development of the doctrine of judicial independence as known in America. One of my readers, Judge William O. Thomas, of Kansas City, Mo., suggested, about a year ago, as a kindred subject, that I should discuss on historical and philosophical lines *The Proper Place of Precedent in Our Judicial System*. Your gracious and highly appreciated invitation to deliver your Annual Address furnishes me with the opportunity of making the attempt.

There has been so much said and written in the past few years concerning what has been termed judicial usurpation, judicial legislation and judicial oligarchy that it is not untimely to take our latitude and longitude and determine exactly where we stand. The difficulty in reaching the minds of the most restless critics of existing institutions lies in the fact that they are not in any real sense students of the history of the law, that they are impatient of precedent, that they have no knowledge of the processes of legal growth, that they imagine that systems which it has taken centuries to build



Hampton L. Caram.

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can be razed in a night, and that a new and better structure can be excogitated, without reference to the architecture of what they are pleased to call an archaic past. They are like navigators who would attempt new channels without testing their courses by existing charts and constant soundings. They are ignorant of the cardinal truth so well stated by Pollock and Maitland (*History of English Law*, Vol. I, Introduction), that "the matter of legal science is not an ideal result of ethical or political analysis; it is the actual result of facts of human nature and history." It is the glory of the Common Law, as those of us who love and revere it well know, that it has the power to draw together the scattered light of many centuries and many lives and focus their rays upon the broad pathway which leads men to justice. It is the correlation and the grouping of results, the intensity and the identity of aim, of purpose and achievement, through all the years, which establish the stability of law and the real value of liberty. We speak of the body of the Common Law. It is a striking phrase, and its meaning is unfolded by Sir Matthew Hale in the fourth chapter of his *History of the Common Law*: "But though particular variations and accessions have happened in the laws, yet they being only partial and successive, we may with just reason say, they are the same English laws now that they were six hundred years since, in the general;—as the Argonaut's ship was the same when it returned home, as it was when it went out; though in that long voyage it had successive amendments, and scarce came back with any of its former materials;—and as Titus is the same man he was forty years since; though physicians tell us, that in a tract of seven years, the body has scarce any of the same material substance it had before." Among modern writers I do not know of any more expressive reference to that phrase—"the body of the law," than that which occurs in one of the essays of the lamented Maitland, where he says: "It is not so much a metaphor as the expression of a fact, for it is a body of which every atom is subject to change, decay, repair and yet the body remains the same." Although

we extend our minds back in contemplative review of the past, and we allude to this generation or to that generation, to the eighteenth, seventeenth, fifteenth, thirteenth or to the twelfth centuries, yet it makes but little difference whether we say the Common Law of Blackstone, of Hale, of Coke, of Littleton, of Bracton or of Glanville, for however far back we go, we still find a great body of jurisprudence, which while varying in detail, embodies continuity of life and substantial identity of character, constituting the broad and solid foundations, the supporting walls, and the overarching domes of our judicial temples. We find the same persistent virility and similarity of purpose in the lives and the labors of the men who have illustrated and expounded the axioms of what Mr. Justice Mitchell (138 Pa. St. Rep. 250) called "the beautiful science of the Common Law, which is the living science of justice, and adapts the application of first principles to changes in the affairs of men." In the examination of this total mass of judicial work we may pick out the labor of this or that man, and so long as we are close to it, we can distinguish the marks of the individual tool and the particular style and genius of workmanship. But as we recede, like withdrawing from a building to a point where walls begin to tower and we get the mass in proper perspective, we realize that the individual worker did not stand alone, but that he was simply a contributor to a general plan, and that although at the time he was in action his individual exertions seemed to be personal and peculiar to himself, yet in some way he was but a mere instrument for expressing those molten principles which flow through the centuries, fusing, melting and reducing into precious metal the rough ores dug from the mines of life.

And so, I am going to ask you to trace with me the history of the doctrine of Precedent, and then consider its policy and wisdom as a part of legal science as administered in America. It is needless to spend time upon the Anglo-Saxon period. The doctrine of Precedent did not then exist. In fact it could not exist, for there was then no general system of remedial

justice, and in an age when the only forms of trial known were by compurgation, and by the ordeal of fire and water, and in the latter an appeal was made through priestcraft and superstition to the Almighty to establish innocence by a physical miracle, there was no room for judicial consideration of either facts or law.

Nor did the doctrine of Precedent originate in Anglo-Norman times, but under the Angevin Kings, particularly under Henry II. and Henry III., certain conditions favorable to the growth of Case law existed, which furnished in the days of the later Plantagenets and the Lancastrians the soil from which the doctrine definitely sprang. These preliminary conditions it is in order to consider. The earliest treatise of any kind upon the Common Law is that of Glanville, who was the Chief Justiciar of Henry II. and his manuscript was composed about the year 1185 A. D. It does not deal with substantive law directly, but is a treatise upon remedial practice based on eighty-six writs, the structures of which surprisingly resemble the processes of to-day. A careful study of Glanville's book will convince any reader of the truth of Holdsworth's remark that "Law Courts and their rules of procedure are the substantive part of early bodies of law." (Introduction to A History of English Law by W. S. Holdsworth, Vol. I, xliii.) This is in accord with the view of Mr. Dicey, who says that "It is impossible to handle procedure freely without immediately trenching upon substantive law. Where there is no remedy there is no right. To give a remedy is to confer a right." (Law and Opinion in England, by A. V. Dicey, p. 485.) And to this must be added the significant words of Sir Frederick Pollock, that, "in a state of government where both law and procedure are new, it is hard to draw an exact line between them, or to provide for urgent matters of procedure without determining the bent of the law itself. Sir Henry Maine's observations on the dominant importance of procedure in archaic law may now be called classical, and are presumed to be familiar to all historical students." (The Expansion of the Common Law, p.

50.) The chief problem of Glanville and his royal Master — who, from a lawyer's point of view, was next to Edward I., the greatest of the English Kings,—was the consolidation of the justice of the Kingdom by concentrating judicial authority in the Crown by bringing to the King's court jurisdiction over the various disputes between subjects, which prior to that time had been dealt with separately by the shire or county courts, the hundred courts, the forest courts, and by the barons in their own or manor courts. In short, England presented a disorderly scene. There were as many courts as there were counties, hundreds and manors and there was no method of subjecting their various rulings to anything like an appellate supervision. Therefore there could be no uniformity in the statement of a legal rule and no uniformity of practice. Subjection unto the Crown was necessary to overcome local resistance, and this was done by the devising of the remedial writs described in Glanville, which were issued in the King's name, but were attested by his Chief Justiciar. In this way and by these means the county and hundred courts were gradually supplanted by the courts of the King, and even the barons were forced to yield much of their private jurisdictions. Although we find but rarely in Glanville's text the statement of a right and no trace whatever of reliance upon cases, yet we owe to him—who was described by Coke "as the most learned and skilled in the laws and customs of the realm of any one then at the helm of justice"—the definite establishment of that system of judicature which made it possible for the King's judges during the following centuries to enjoy, as Maitland says, "such an opportunity of moulding a powerful practical scheme of law as has been rarely given to men."

All this became apparent in the reign of Henry III. through the appearance of Bracton's great work, based on a most extensive and careful study of the judicial practice of the thirteenth century, a book which contains a statement of genuine English substantive law, "a statement so detailed and accurate that there is nothing to match it in the whole

legal literature of the Middle Ages." (Letter of Paul Vinogradoff — *The Athenaeum*, 19th July, 1884.) But that which is of the greatest interest and pertinency to our subject is the circumstance that Bracton, aside from his manifest indebtedness to the Roman law for the expansive and philosophical nature of his monumental work, reveals his reliance upon judicially decided cases for what he states as English substantive law. English judges had been going upon *iters* for more than a hundred years; records of their proceedings had been enrolled and preserved; and among these the most notable rolls were those of Martin of Pateshull, a man "of marvelous prudence, and most exercised in the laws of the Kingdom," and William Raleigh, an ancestor of the renowned Sir Walter. In his *Biographica Juridica*, Foss quotes from the Fourth Report of the Public Record Commission, an amusing bit of testimony to the legal activities of Pateshull. In a letter to the authorities, a brother justiciar appointed to go to York circuit with him prays to be excused from the duty, "for," said he, "the said Martin is so strong, and in his labour so sedulous and practised that all his fellows especially W. de Raleigh and the writer are overpowered by the labour of Pateshull, who works every day from sunrise until night." There are no fewer than four hundred and fifty references by Bracton to cases decided by his predecessors and colleagues, and it appears that while composing his treatise he borrowed the Court's rolls containing cases coming before Pateshull and Raleigh, and kept them so long that he had to be admonished to return them. The proof of all this is due to a discovery by Paul Vinogradoff, Professor of History in the University of Moscow, who in the summer of 1884 was in England seeking materials for mediaeval history. A study of the English manor led him to Bracton's text, and from the text he went to his authorities, and then dug out from the recesses of the British Museum an ancient MSS. which proved to be Bracton's note book, and collated the cases with those quoted in support of the text. Here then was a revelation that as far back as the

early thirteenth century case law was a well established method of building up and developing the body of the Common Law. Let it be remembered, so that the full significance of this may be realized, that at this time statute law played a very subordinate part. Parliament, even as it was known in comparatively early days, did not come into existence until the reign of Edward I, and even as late as the days of the Tudors the entire body of statutory law as compared with the bulk of judicial decisions was slight indeed. At the time of Bracton's authorship the statutory law of England consisted in the main of but four documents—Magna Charta, the Charter of the Forest, and the Statutes of Merton and Marlbridge. Even Magna Charta did not contain much new law; its most celebrated provisions but proclaimed principles which a tyrant King had set at naught, while the Statute of Merton is best remembered for the famous declaration, "We are unwilling to change the laws of England." "The law of the thirteenth century," as has been said by the ripest of legal scholars, "was judge-made law in a fuller and more literal sense than the law of any succeeding century has been; * * * * they had many new cases and little recorded authority, and were almost compelled to be original. But they certainly intended to be consistent, and were aware that their judgments were regarded as fixing the law. The reason why judicial precedents acquired extensive authority was the absence of any other source of law capable of competing with them. Legislation was still exceptional and occasional, and there was no independent learned class. When the King's court began to keep its rolls in due course the rolls themselves were the only evidence of the principles by which the court was guided." (Pollock's *Expansion of the Common Law*, p. 50.) Of course, it must be borne in mind that the court rolls of that day did not contain reasoned opinions, or indeed any opinions. They concluded with judgments. I have verified this by personal examination. Some years ago when in London I visited the Records Office in Chancery Lane and called for a record of Henry III. It was produced in the

shape of a roll about four feet long consisting of hundreds of skins or vellum folios stitched together at the top, and containing on both sides closely written entries in thousands of cases. I was astonished at the bulk of this judicial matter, and on my return mentioned the circumstance to Mr. George F. Deiser, of Philadelphia, who is an accomplished expert, having given much time in London to a special study of the rolls, and he told me that he had counted as many as twenty thousand cases to each term, making a total of eighty thousand cases in a single year of the reign of Edward I.

This is simply confirmatory of what Mr. Horwood had written in 1866 in his Preface to his Introduction of the Year Books of 20 and 21. Edw. I. He says: "It is impossible to look at the Plea Rolls of the reign of Edward I., or even of previous reigns, without remarking the great amount of litigation which took place, so much out of proportion to what might be expected from the then comparatively small population of the country. But the mere fact of this extensive litigation speaks strongly for the general tendency to order and the willingness to abide by law, rather than the endeavor to assert rights or repel oppression by force; at the same time it shows that, as a rule, the people had confidence in the judges, and the power of the Crown to enforce their decisions."

It is clear then that Bracton's four hundred and fifty references were carefully selected. The most concise description of Bracton's Note Book is given by Sir Frederick Pollock, who says: "The contents of this book 'may be briefly described as transcripts of entries on the judicial rolls of the first twenty-four years of Henry III.,' that is, from A. D. 1218 and onwards. * * * * The only thing which need make us hesitate to call the Note Book a book of reports is the absence of any indication that it was meant to be communicated to the profession in general, or used by Bracton himself otherwise than as material for his treatise on the laws of England."

The true Reports, however, soon followed in the celebrated Year Books, running with some intermissions from 20 Edw.

I. to 27 Henry VIII. "Written by lawyers for lawyers, they are by far the most important source of, and authority for, the mediaeval common law. * * * They are the precursors of those vast libraries of reports which accumulate wherever the common law or any legal system which has come under its influence, is studied and applied. If we except the plea rolls they are the only first hand accounts we possess of the legal doctrines laid down by the judges of the fourteenth and fifteenth centuries, who building upon the foundations which had been laid by Glanville and Bracton constructed the unique fabric of the mediaeval common law." (Holdsworth History of English Law, Vol. II, p. 444.) The late Mr. Soule, of Boston, who was a specialist in the Year Books, is authority for the assertion that there were two hundred and thirty-five manuscript editions. Three abridgements of the Year Books appeared — Statham's in 1490; Fitzherbert's, which went through three editions, the first appearing in 1514, and the last in 1586, giving extracts even from Bracton's Note Book, and Broke's, of which five editions were called for between 1568 and 1586. These were the legal encyclopedias of that day. It is natural that we should look through such material for some expression on the doctrine of Precedent, and that, too, with the expectation of finding it. We are not disappointed. In the Year Book of 32 Edward I. (Horwood's Edition, p. 33) we find William de Herle, who became Chief Justice of the Common Pleas in 1327, impressing on the court before whom he argued that their decision will be received as authority and therefore ought to be carefully considered, "for the judgment that you shall now make in this matter will be used hereafter in every *quare non admisit* in England." Sir Frederick Pollock considers it most significant that a remark so pointedly reported evoked no note of dissent from the Court, the opposing counsel or the reporter himself. (First Book of Jurisprudence, 315.) In A. D. 1454 (33 Henry VI. 41a) Chief Justice Prisot of the Common Pleas, whom Coke calls "a famous and expert lawyer," declared from the bench how inconvenient it would be for the court to disregard the

judgments of earlier date. The main question was on the construction of a statute, and one reason given was that the judges who were nearer to the date of the statute were more likely to understand it rightly, and he insisted on the general importance of adhering to precedent. "The young apprentices of the law," said the Chief Justice, "will give no faith to their books, if points which they find many times laid down in their books are now to be decided the other way." A year later we find him contending in the Exchequer Chamber for the same doctrine. (34 Henry VI. 24.) In the great case of larceny by breaking bulk, in 1473 (Year Book 13, Edw. IV. 9), Chief Justice Brian quoted particular cases much as we do now. Instances multiply as we reach the sixteenth century, but it is sufficient to quote the supremest master of the Common Law, Lord Coke, who in the Preface to the first volume of his renowned Reports, says: "How carefully have those of our profession in former times,"— he was writing of days prior to Elizabeth,— "reported to ages succeeding, the opinions, censures and judgments of their reverend Judges and Sages of the Common Law, which if they had silenced and not set forth in writing, certainly as their bodies in the bowels of the earth are long ago consumed, so had their grave opinions, censures and judgments have with them long since wasted and worn away with the worm of oblivion"; and his concluding advice to the reader is, that "he neglect not in any case the reading of the old Books of Years reported in former ages, for assuredly out of the old fields must spring and grow the new corn." In the famous epilogue to Coke-Littleton it is written: "Yet this I may safely affirm that there is nothing herein but may either open some windows of the law, to let in more light to the student by diligent search to see the secrets of the law, * * * * and withall to enable him to inquire and learn of the sages, what the law, together with the true reason thereof, in the cases is; or lastly, upon consideration had of our old books, laws and records (which are full of venerable dignitie and antiquitie), to find out, where any alteration hath been, upon what ground the law hath been since changed,

knowing for certain that the law is unknown to him that knoweth not the reason thereof, and that the known certantie of the law is the safetie of all."

Following Coke, the most definite and pregnant expression to be found occurs in the case of *Spicer v. Spicer*, decided by the King's Bench in 1617 (Croke Jac. 527), where Chief Justice Montague tersely says: "Those things which have been so often adjudged ought to rest in peace."

In these passages we have the marrow of the matter, and all that has taken place since is but illustrative and confirmatory of the methods pursued in the orderly, progressive and steady development of the system. From an examination of the pages of Dyer, Plowden, Anderson, Hobart and Yelverton in the sixteenth century to the last volume of the current reports either in England or America, whether the courts be Federal or State, we find the judges engaged with infinite labor upon the examination of cases, the reconciliation of authority, the nice discrimination between conflicting cases, the effort to avoid confusion and misapprehension, and at times the complete rejection of those reasons which on fair analysis and further study, in the light of greater and profounder knowledge, as well as of changed conditions of society, had outlived their proper sphere of influence. Changes of course there were from century to century. The ordeal and trial by battle, the military features of feudal tenures, the older forms of real actions, the assize of novel *disseisin*, *mort d'ancestor*, of *darrein presentment* disappeared, and trial by jury, free and common soccage and actions of ejectment took their place. But the changes were not indicative of decay. It is no argument against the continuous life of the vegetable or animal kingdom that we encounter in the forest dead trunks and withered branches, or that we find in caves the bones of the mammoth, or the skulls of men of the stone age.

The historic existence of judge-made law,—that is of laws or rules created by the courts in the course of deciding definite cases — is demonstrably true. And whether we call it judge-made law, or judicial legislation, or judicial declarations of

the rules of law is truly a matter rather of verbal than substantial consequence. I do not mean that there is not such a thing which the best of judges abhor as a trespass upon legislative ground, but that is a distinction which I shall touch in conclusion. At this point I am emphasizing the undeniable fact that for more than seven hundred years the courts have been, and still are, engaged in making law, by whatever name the function be called, and this, too, in the exercise of a perfectly natural and rational exercise of powers inherent in the judicial office. That philosophic statesman, Edmund Burke, summed the matter up when he declared: "The English jurisprudence hath not any other sure foundation nor consequently the lives and property of the subject any sure hold, but in the maxims, rules and principles and judicial traditional line of decisions contained in the notes taken, and from time to time published (mostly under the sanction of the judges) called Reports. * * * * To give judgment privately is to put an end to Reports; and to put an end to Reports is to put an end to the law of England."

We have but to recall the names of leading cases in all branches of the law to prove this to be true. Whether we take *Taltarum's* case as to the barring of contingent remainders and the unfettering of estates; *Calye's* case on the liability of innkeepers; the *Six Carpenter's* case as to what constitutes a trespass *ab initio*; *Chandelor v. Lopus*, as to false representations in effecting sales; *Coggs v. Bernard*, as to the multifarious varieties of bailment and the liability of common carriers; *Carter v. Boehm* as to insurance; *Lickbarrow v. Mason* as to stoppage *in transitu*; *Waugh v. Carver* as to what constitutes a partnership; *Marbury v. Madison* as to the Constitutional powers of Congress; *McCullough v. Maryland*, and *Cohens v. Virginia* as to the limitations upon the sovereignty of States; *Gibbons v. Ogden* as to interstate commerce, and the choicest of those innumerable lists culled from the decisions of courts of last resort in all the States of the Union, known as the *Lawyers' Reports Annotated*, *American Decisions*, or by other kindred names, we must assent to the state-

ment that nine-tenths of the law of contract, private or corporate, and nearly the whole of the law of torts, the basic principles of our law of estates, of landlord and tenant, of master and servant, and of personal liberty are not to be found in any volume of statutes. Many acts, such as the Statute of Frauds, the Statute of Uses, the Statute against Fraudulent Conveyances, the Statutes of Mortmain, adopted from the Mother Country, and our own mightiest of National Statutes, the Judiciary Act of 17th September, 1787, especially the 25th section, as to the appellate powers of the Supreme Court of the United States, owe their vitality, their usefulness and their scope to the energetic and persistent activities of the judges in breathing into them the breath of life. Many of our other statutes — such as Sales Acts, Negotiable Instrument Acts, Partnership Acts, Property Acts, Bills of Lading Acts, *et id omne genus*—are but little else than the reproduction in a statutory shape of rules originally established by the courts. We owe almost the whole of our law of Trusts and Uses, beneficent and comprehensive as they have become, and our equitable jurisdictions in fraud, accident and mistake, with but little aid from the legislative branch, to the same source; and we owe to the striking and instructive contrast between the equitable and the legal rights of married women, most of the independent status which they now enjoy.

Having analyzed the qualities of the soil from which the doctrine of Precedent sprang and examined some of its fruits, it is now in order to give a description of the doctrine itself. You will note, as I quote Hale and Vaughan, the distinction drawn by the former between a law strictly speaking and judicial action properly considered, and the exclusion by the latter of what we now call *obiter dicta*. Sir Matthew Hale, in writing of Judicial Decisions, says: "It is true, the decisions of courts of justice, though by virtue of the laws of this realm they do bind, as a law between the parties thereto as to the particular case in question, till reversed by error or attain; yet they do not make a law, properly so called, for that only the King and Parliament can do; yet they have a great weight

and authority in expounding, declaring and publishing what the law of this Kingdom is; especially when such decisions hold a consonancy and congruity with resolutions and decisions of former times." (History of the Common Law — Sergeant Runninton's Edition, Vol. I, p. 141.) For this he gives four reasons: because "the persons who pronounce these decisions are men chosen by the King for that employment, as being of greater learning, knowledge and experience in the laws than others"; because "they are upon their oaths to judge according to the laws of the Kingdom"; because "they have the best helps to inform their judgments"; because "they do *sedere pro tribunali*, and their judgments are strengthened and upheld by the laws of the Kingdom, till they are by the same law reversed or avoided." Sir John Vaughan, who was the Lord Chief Justice of the Common Pleas in the reign of Charles II., declares: "An opinion, though erroneous, concluding to the judgment of a court, is a judicial opinion; because it is not only delivered under the sanction of the judges' oath, but on mature deliberation. But an extra judicial opinion, whether given in or out of court, is no more than the *prolatum* of him who gave it; it has no legal efficacy. So, an opinion given in court, if not necessary to the judgment, is extra judicial." (Vaughan's Reports, 382.)

Passing by lesser intermediate lights, and coming to the great luminary of the eighteenth century, Sir William Blackstone, who wrote under the inspiration of Hale's Analysis and largely followed his arrangement, and whose Commentaries gave a second birth to the Common Law on this side of the Atlantic, we are told: "As to general customs, or the Common Law, properly so called; this is that law, by which proceedings and determinations in the King's ordinary courts of justice are guided and directed. * * * But here a very natural, and very material, question arises: how are these customs or maxims to be known, and by whom is their validity to be determined? The answer is, by the judges in the several courts of justice. They are the depositaries of the law; the living oracles, who must decide in all cases of doubt, and

who are bound by an oath to decide according to the law of the land. Their knowledge of that law is derived from experience and study; from the '*viginti annorum lucubrations*', which Fortescue mentions; and from being long personally accustomed to the judicial decisions of their predecessors. And indeed these judicial decisions are the principal and most authoritative evidence, that can be given, of the existence of such a custom as shall form a part of the Common Law. * * * For it is an established rule to abide by former precedents, where the same points come again in litigation; as well to keep the scales of justice even and steady, and not liable to waver with every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from, according to his private sentiments; he being sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one." But he does not leave the courts in chains. He states that this rule admits of exceptions, particularly where the former determination is most evidently contrary to reason, or clearly contrary to the divine law. "But even in such cases," he adds, "the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was *bad law*, but that it was *not law*." He finally concludes: "The doctrine of the law then is this: that precedents and rules must be followed, unless flatly absurd or unjust; for though their reason be not obvious at first view, yet we owe such a deference to former times, as not to suppose that they acted wholly without consideration."

The later developments of the doctrine in England must be rapidly sketched, and in summarizing results I must confess my indebtedness to Sir Frederick Pollock (First Book of

Jurisprudence, Chap. VI, Case Law and Precedents) and to Mr. Dicey (*Law and Opinion in England*, Lecture XI. Judicial Legislation. Note IV — Judge-made Law — Appendix — pp. 473-481) for the most lucid of many discussions. Pollock points out that as regards the authority of decided cases, it must be considered whether they proceeded from a superior court of original jurisdiction or from a court of appeal which is itself subject to a further appeal, or from a court of last resort. In other words, the binding effect of a case is according to its degree of rank. Courts of inferior jurisdiction are bound by the decisions of their superiors, so long as they in turn are not reversed by higher authority, and courts of co-ordinate authority are at liberty, if the field be open, to reach their own conclusions even though at variance with a court of similar degree. The court of last resort, however,— the House of Lords — is bound by its own decisions, and relief can only be sought in Parliament. He quotes a declaration of Lord Halsbury as the last word in a discussion which had run for more than fifty years, and then sententiously remarks: "No other court of last resort has gone quite so far, it is believed, in disclaiming power to correct itself." Mr. Dicey premises: "As all lawyers are aware, a large part, and as many would add, the best part of the law of England is judge-made law — that is to say, consists of rules to be collected from the judgment of the courts." He adds that "the courts or the judges, when acting as legislators, are of course influenced by the beliefs and feelings of their time, and are guided to a considerable extent by the dominant current of public opinion. Eldon and Kenyon belonged to the era of old toryism as distinctly as Denman, Campbell, Erle, and Bramwell belonged to the age of Benthamite liberalism." He qualifies this, however, by stating that "whilst our tribunals, or the judges of whom they are composed, are swayed by the prevailing beliefs of a particular time, they are also guided by professional opinions and ways of thinking which are to a certain extent, independent of and possibly opposed to the general tone of public opinion." He explains this by the facts

that the judges are the heads of the legal profession; that they have acquired the intellectual and moral tone of English lawyers; that they have acquired a logical conscience; that the main employment of a court being the application of well known legal principles to the solution of given cases, and the deduction from these principles of their fair logical result, they are charged with the maintenance of the logic or symmetry of the law; that their aim is the certainty rather than the amendment of the law; that the courts of necessity deal with particular cases, but as one case after another of a similar kind comes before them they must determine the general principle on which the decision of all such cases should depend. They attempt to reach and usually do reach a general and reasonable rule. Parliament, on the other hand, pays but little regard to any general principle, but endeavors to meet in the easiest and most off-hand manner some particular grievance or want. Hence, Parliamentary legislation is spasmodic and tentative; judicial legislation is logical and scientific. Mr. Dicey then describes the characteristics of judge-made law: first, it is real law, though made under the form of interpretation of law; second, it is subject to these limitations; it can not declare a new principle, it must consist of a deduction from an established legal principle; it can not override statute law; it may limit or extend the operation of a statute by fair canons of construction, but it can not set a statute aside; it can not override a well established principle of law; it can not change a rule announced by the highest judicial authority. These positions he defends against all the usual objections and criticisms, and pointedly concludes that judges, however freely they may be criticised for a conclusion in a particular case, are not to be justly blamed for adherence to a system which is the fruit of the orderly development of society, based on actual experience and history.

It is now time to turn to America, and here at first sight perplexities arise. The problem of determining what fairly constitutes a precedent is embarrassed by the fact that instead of a small and compact territory, as in England, and a single

sovereignty, we have to consider forty-seven separate state sovereignties, with innumerable courts of high and low degree, each working under a written paramount law known as a Constitution, partitioning power between three separate and co-ordinate departments, and imposing limitations upon popular sovereignty unknown to the Motherland, and all these are still further subjected to a Federal Constitution as the supreme and paramount law, "anything to the contrary notwithstanding." It requires a clear brain and a steady grip upon fundamental principles to preserve steadiness and stability. It might almost seem as if we were in the throes of disorder such as existed in England, before Henry II. and Glanville consolidated the justice of the Kingdom. But fortunately we inherited the Common Law as the basis of our systems, and this binds into general harmony the jurisprudence of the several States. Our common inheritance operates as a gravitative force, controlling centrifugal tendencies and preventing the machines of state governments from threshing themselves into pieces by wild and wayward movements. It is possible then to state some definite results. The best American definition is that given by Kent: "a solemn decision upon a point of law, arising in any given case, becomes an authority in a like case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it can be shown that the law was misunderstood or misapplied in that particular case." (Kent's Commentaries, Vol. I, p. 475.) This definition has been subjected to masterly analysis by Mr. Daniel H. Chamberlain, of New York. (The Doctrine of Stare Decisis — Prize Essay — N. Y. State Bar Assn. Reports, Vol. VIII, pp. 70-92.) The doctrine is that it is the duty of judges and courts to follow established precedents, to adhere to settled law; to administer the law, *jus dicere*; and not to legislate, *jus facere* or *jus dare*: to declare the law as it is, and not according to notions of what it ought to be. A precedent to have full effect must be a solemn decision, a determination by the court of a point arising upon the

record and "involved in judgment" (Mr. Justice Curtis in *Carroll v. Lessee of Carroll*, 16 Howard — 287), after the parties have been heard in argument, and after deliberate consideration by the court, and a public declaration of the conclusion. *Obiter dicta* must be rejected, observations, processes of reasoning, illustrations or analogies are no part of the decision, however persuasive or respectable. It can only bind in like cases, and in courts of inferior jurisdiction, leaving courts of co-ordinate or similar jurisdiction free to examine, compare and conclude for themselves, and leaving the highest tribunals free, in cases of rehearing, or of clear and demonstrable misunderstanding or misapplication, or of a changed condition of society, to correct its own errors. The Supreme Court of the United States has never held itself to be bound irretrievably by its own decisions and the Supreme Courts of the several States have time and again, in cases of clear need, and, without uprooting the general doctrine of precedent, distinguished, qualified or overruled adjudications which on examination and final analysis proved to have been a departure from or a real menace to the true rules of law. The excision of errors by the judicial knife has been for the purpose of removing sources of poison in the body politic, and for the preservation of the vital organs. Instances, deceptively numerous in the aggregate, owing to the number of our States, of an apparent departure from the rule of Precedent, are rather proofs of the soundness of the rule itself — *exceptio probat regulam*. To cite examples would be an impracticable task in a paper of this character, but the reservation of the right has been nowhere more wittily or more wittingly expressed than by Chief Justice Bleckley (*Ellison v. Georgia R. R. Co.*, 87 Ga., 695): "Some courts live by correcting errors of others and adhering to their own. On these terms courts of final review hold their existence, or those of them which are strictly courts of review, without any original jurisdiction, and with no direct function but to find fault or see that none can be found. With these exalted tribunals, who live only to judge the judges, the rule of *stare decisis* is not

only a canon of the public good, but a law of self-preservation. At the peril of their lives, they must discover error abroad and be discreetly blind to its commission at home.

* * * * Nevertheless, without serious detriment to the public or peril to themselves, they can and do admit now and then, with cautious reserve, that they have made a mistake. Their rigid dogma of infallibility allows of this much relaxation in favor of truth unwittingly forsaken. Indeed, reversion to truth in some rare instances, is highly necessary to their permanent well being. Though it is a temporary degradation from the type of judicial perfection, it has to be endured in order to keep the type itself respectable."

At the same time, in your own State, the maintenance of the doctrine of Precedent has been guarded by Code provisions against the disturbance of prior decisions by small majorities of judges in the final appellate courts. (Civil Code of Georgia — Vol. 2, Part 2, A. D. 1895, p. 1741, § 5588, Park's Annotated Code of Ga., 1914, Vol. 5, page 4392, § 6207 (5588)).

I venture to suggest that the striking difference between the rigidity of the House of Lords' rule, and the greater flexibility of our own system is in large measure due to the circumstance that with us the judges of our appellate courts are nowhere parts of a legislative body, and therefore have no direct remedial legislative power: they must depend largely upon themselves for their reserved right to review their own decisions; whereas in England the House of Lords constitutes the upper branch of the Parliament, and the Law Lords, while bound not to reverse themselves judicially, can introduce and conduct through Parliament remedial bills at their own instance, as was frequently done by Lords Brougham, Campbell, Cottenham, St. Leonards, Westbury, Cairns, Selborne, Herschell, and Halsbury. Moreover, it must be borne in mind that the Chancellor, while in judicial office, is not only the Presiding Officer of the House of Lords, but is a member of the existing ministry and has a right to introduce measures backed by his official and professional influence. With no

such opportunities, and with no such rights, our own Chief Justices and their associates have, within proper and well considered limits, corrected judicial errors, without exceeding their powers, and have thus secured to themselves the possession of ample moral and intellectual freedom, while bound in good faith to complete judicial integrity in declaring and maintaining the rules "according to the golden metewand of the law and not by the crooked cord of discretion." (Lord Coke.) The conditions of the exercise of the power are well expressed by George Sharswood, one of the American editors of Blackstone, and later a Chief Justice of Pennsylvania, who wrote: "There is no inconvenience so great, no private hardship so imperative, as will justify the application of a different rule to the resolution of a case, than the existing state of the law will warrant." He admits that there is some difficulty in settling with accuracy the limits of the maxim *stare decisis* and that when the obstructive precedents relate rather to the application than to the establishment of a rule, they are not of so binding a character that they must be followed, but he declares, "that it is just as certain that when the principle of a decision has been long acquiesced in, when it has been applied in numerous cases and become a landmark in the branch of the science to which it relates, when men have dealt and made contracts on the faith of it — whether it relate to the right of property itself or the evidence by which that right may be substantiated — to overrule it is an act of *positive injustice*, as well as a violation of law, and a usurpation by one branch of the government upon the powers of another." (Law Lectures, Sharswood, p. 45.) The most admirable description of a punctilious and high-minded judge in this relation that I have ever encountered, occurs in Horace Binney's Eulogium upon Chief Justice Tilghman: "There is not a line from his pen that trifles with the sacred deposit in his hands, by claiming to fashion it according to a private opinion of what it ought to be. Judicial legislation he abhorred, I would rather say, *dreaded*, as an implication of his conscience. His first inquiry in every case was of

the oracles of the law for their response; and when he obtained it, notwithstanding his clear perception of the justice of the cause, and his intense desire to reach it, if it was not the justice of the law he dared not administer it. * * * With a consciousness that to the errors of the science there are some limits, but none to the evils of a licentious invasion of it, he left it to our annual legislatures to correct such defects in the system as time either created or exposed; and, better foundation in the law can no man lay." (Appendix to 16th Sergeant & Rawles Rep. Pa.)

The policy of the rule rests upon a broad and sound basis. Blackstone placed it somewhat narrowly upon a deference to former times. Kent placed it upon the law *as it is*, and urged that the best evidence of what the law is must be found in the former decisions. Other writers have bottomed it upon public convenience and utility. Judges have generally grounded it on the certainty and stability of the law: *misera est servitus, ubi jus vagum aut incertum*. Thus we reach a necessity inherent in the constitution of civil society, a condition recognized in other systems than those of the Common Law alone. It prevailed in Equity, which while originating in the somewhat vague discretion of the Chancellor, became in time a system governed by established rules and equally bound by precedents. It had its place in the Roman Law as has been well demonstrated by that great lawyer John Chipman Gray, in his paper on Judicial Precedents. (A Study in Comparative Jurisprudence, 9 Harvard Law Rev. 27). The objections to Blackstone's views of the Civil Law by Mr. Austin have been well answered by Professor Hammond, a profound civilian, in his elaborate and most satisfactory edition of Blackstone: but even Mr. Austin declared that: "A part of the Roman law, like much of the law of England, was made by judicial decisions, in specific particular cases. For in the Roman law, as in our own, decided cases exerted, by way of precedent, an influence on subsequent decisions, provided there was a sufficient train of uniform decisions. This influence was styled '*auctoritas rerum per-*

petuo similiter judicatorum'." (Austin's Lectures on Jurisprudence, Vol. II, § 858.) Even the efforts of Frederick the Great to forbid, by provisions of the Prussian Code, the courts from guiding their decisions by the decisions of their predecessors, have proved futile in practice; and Mr. Soule, to whom I made a previous reference, spent a year in correspondence and in travel through the leading Continental nations in testing the matter and has given us as results that in practical judicial life in Germany, Austria, Italy, Spain, and France judges conform as far as practicable to what has become settled either in practice or theory. (*Stare Decisis* in Continental Europe, 19th Green Bag, 460.) Instead then of being an artificial product, or a habit of ancestor-worship, or an irrational devotion to a musty past, it is the rule of all law. "Law to be obeyed, must be known; to be known, it must be fixed; to be fixed, what is decided to-day must be followed to-morrow; and *stare decisis, et non quieta movere*, is simply a sententious expression of these truths." (Chamberlain's Essay, *ut supra*, 88.)

Looking back through the radiant years to our historic past, dim only because of the depth of the gulf of time, we may well declare that we live in

"A land of settled government,
A land of old and just renown,
Where freedom broadens slowly down
From precedent to precedent."

A COMPARISON OF OUR CRIMINAL JUDICIAL SYSTEM — ITS DEFECTS AND ENFORCEMENT.

PAPER BY
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OF ATLANTA.

If a machine works unsatisfactorily we would first search for defects in the machine itself; and, secondly, we would look to see if it be skilfully operated. A judicial system, while not an inflexible machine, may be examined in the same order.

In inspecting our judicial system, we do so with the knowledge beforehand that it is not perfect. No system, except that of ethics, and religion, has ever claimed faultlessness.

"Whoe'er thinks a perfect work to see,
Thinks what ne'er was, nor is, nor e'er shall be."

In a judicial system, as in machinery, the point of safety has been reached when it is equal in kind to that in general use and reasonably safe for all persons who operate it with ordinary care and diligence. If our system not only meets this requirement but is equal to the best and safest known system, its defects are in the operation and not in the system itself.

The French system, founded on the civil law, is equal, if not superior, to the other Continental systems, but who would wish it to displace ours, with its lack of true cross-examination, loose rules of evidence, partial judges, license in advocacy, and emotional juries?

In the trial of Calas, his threat to murder was only proven at seventh hand.

In a recent famous Belgian trial (where the French system obtains), a witness was permitted to say, "He told that Mme. Lagasse had heard from a lady that Van Stren told her he knew the prisoner was guilty."

The prisoner's counsel is not permitted directly to cross-examine, but only through a partisan judge.

The witness quarrels with the prisoner and the prisoner with the witness. The judge alternately cajoles and abuses. The bystanders may take part in the trial and express their approbation or condemnation.

The French judges, by reason of partisanship, were in 1881, denied the right to sum up.

Doubtless Esterhazy slandered the court when he excused himself for forging the famous "bordereau," for the purpose of supporting the suspicions against Dreyfus, by the plea that "on the trial of spies it is always necessary to forge some documentary evidence, or no spy would ever be convicted."

Our critics do not assert the superiority of the Continental system, but only that of the English system. The stoutest assertors are usually laymen, who, for lack of training and opportunity, ought not to assert so loudly.

Our legal reformers demand (what else is not certain) at least:

- (a) The abolition of the Grand Jury.
- (b) Indictments, if retained, be (1) greatly simplified; and (2) amended at the will and need of the Solicitor.
- (c) Peremptory challenges be granted to neither the prisoner nor the State, or equally to each.
- (d) That there be no presumption of innocence.
- (e) That the burden of proof, not absence of reasonable doubt, decide guilt.
- (f) The prisoner be deprived of his right to make a statement not under oath, permitting him in lieu thereof to become a witness subject to cross-examination.
- (g) The prosecuting officer be permitted to comment upon the failure of the prisoner to make a statement or become a witness.
- (h) That the wife or husband be a competent and compellable witness each against the other, subject to cross-examination.
- (i) The judge be permitted to sum up the evidence.

(j) A majority of the jurors should render a verdict.

(k) Appeal be allowed to the State and the prisoner, or denied to both.

(l) That the pardoning power be either abolished or greatly restricted.

It is doubtful if any single reformer wants all this, but all of them together want at least this. If these be taken, what is left of those safeguards with which the wisdom and experience of ages have protected the life and liberty of the citizen? Upon the one side will be marshalled all the might and power of the State, and on the other a citizen overwhelmed by weakness and despair — three million against one, a mighty sovereignty, with all its weight, power and money, against one human atom.

The most enthusiastic reformer will perhaps admit that these safeguards were, during the rigor of the ancient law, wise and humane; but he will claim that they are now a retreat for crime, not a shield for the weak.

There were in Blackstone's time one hundred and sixty capital felonies. In the evolution of these safeguards, this severity was doubtless a factor, but not the moving, producing one. English desire for fair play, the wish to equalize as far as possible the contest between the citizen and the King was the controlling one.

When the common law was cruellest the privileges of the suspected citizen were at their lowest ebb. The trial by ordeal was not abolished until 1215. The penalty for standing mute extended until the reign of George III, and it was not until the reign of George IV that a plea of not guilty was entered. Prior to 1702 one accused of a felony was permitted to call witnesses, but was not allowed counsel. Leniency of punishment and protection travel side by side *in pari passu* in the development of English criminal law.

Punishment had reached the mercy stage when Oglethorpe founded the Colony of Georgia, but the founders of the Colony and the founders and builders of the State have never thought it wise to leave the accused naked and unprotected

when in conflict with the power and wealth of the State. True, old customs may not necessarily be right customs, but modern reformers might well hesitate to uproot what has been nurtured and cultivated by the wisdom and experience of ages.

If it be true that the privileges of the accused are justified only when the punishment is cruel, there is still in Georgia no room for the iconoclast. Here efficiency and speed in cases of burglary, larceny and the other lesser crimes will satisfy every one except those who believe that the criminal law ought to be a monster of destruction to every one accused, whether innocent or guilty. Punishment for murder has not changed. The accused needs now, if he ever needed, the merciful shield of the law. Indeed, now the need is greater. Learning, education and civilization have augmented the horrors of an ignominious death.

The substituted punishments in capital cases were not so light as to compensate the accused for the loss of every protection against unjust conviction assured to him by the wisdom and experience of a thousand years. It is unthinkable that the State, with all its power and wealth, should be permitted to battle with the accused deprived of shield and helmet, because the loss of the battle will only put him in the Georgia Penitentiary, with its filth and vermin.

The old English law insured the same privileges to the accused in both capital and non-capital cases. Death, in one case, ended all shame and all suffering and the wretch was swallowed up in an everlasting sleep; in the other, there were years, perhaps a whole lifetime, of shame, disgrace and suffering. Why nicely balance the one fate against the other? What fair reason can be given why the unfortunate accused should be denied privileges in the one case which are denied him in the other?

The same civilization that has shortened, in some cases, the years of confinement, has at the same time sharpened human sensibilities. As between death and the Georgia Penitentiary no man capable of shame and suffering would care a feather's weight. Death and the penitentiary both destroy — the one

quickly and mercifully, the other through living years of shame and torture.

If the Georgia system be defective as claimed, the English system is afflicted with those very evils.

GRAND JURY.

The English Grand Jury had its beginning as early as the reign of Ethelred The Unready, in whose law, says Blackstone, its "number, as well as the institution itself, we find exactly described as early as the laws of King Ethelred." From that day until this the Grand Jury has been one of the most cherished of English institutions.

Our State has brought this Grand Jury from the mother country, and to-day the Georgia and the English Grand Juries could, in criminal matters, exchange places and proceed each with the other's duties.

INDICTMENTS AMENDED AND SIMPLIFIED.

In Georgia the indictment is sufficient if it state the offense in terms of the statute or in language so plain that the nature of the offense charged may be understood by the jury. Who would insist upon greater simplicity than this?

The English rule is substantially the same. The indictment must describe the offense with which it charges the accused, specifying the date, circumstances and intent, so that he may know what defense to offer and may be able to protect himself, should he ever happen to be prosecuted for the same transaction the second time.

An English law professor has given this as an approved English murder indictment:

"The jurors of our Lord the King upon their oath present John Doe, on the 1st day of January, in the year of our Lord 1903, feloniously, wilfully and of his malice aforethought did kill and murder one Richard Roe; against the peace of our Lord the King, his crown and dignity."

Without any substantial change, this could be used in a murder case by a Georgia grand jury.

Most English indictments are short and simple, but not

more so than indictments in this State when skilfully drawn. However, in England, as sometimes here, from the nature and necessity of the case, indictments reach greater length and complexity. The indictment in O'Connor's case, in 1884, was one hundred yards long. When made into book shape it filled fifty-seven pages of the size of the pages of *The Times*. One indictment for conspiracy to defraud, tried in the Criminal Court in 1890, contained sixty-nine counts. Another in 1912, for inciting suffragettes, contained fifty-four.

Until the 14 and 15 Vict., indictments were not amendable. Amendments to indictments are now permitted when the variance sought to be avoided is not material to the merits of the case nor prejudicial to the defense on the merits.

Here they are not amendable, and ought not to be. Lawyers know that amendments in civil cases are not infrequently a mere basis for perjury. A material amendment permits a trial not upon indictment, but on a charge that the Grand Jury might not have found true. Denial of amendments works no real hardship to the State. At once, and practically with no expense, all errors can be corrected by a new indictment; and that is safer than to loose the ordinary Solicitor General to roam at will in the wide field of possible amendments.

CHALLENGES.

In England, challenges for cause are the same as with us, except that in England there is a challenge *propter respectum*, e. g., to a peer. But only the accused can peremptorily challenge, and in cases of treason or felony only. In treason the prisoner is allowed thirty-five peremptory challenges, and in felony only twenty. Peremptory challenges are not permitted in misdemeanor cases and, unless excused for cause, a man's bitterest enemy may sit in judgment against him.

In Georgia the accused, if the offense may subject him to death or to four years' imprisonment, or longer, is given twenty peremptory challenges; but if only to imprisonment for less than four years, he has only twelve such challenges.

In each case, the State is allowed one-half the number allowed the prisoner. In our Superior and City Courts, the defendant in misdemeanor cases is entitled to seven peremptory challenges and the State five.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE.

In civil cases in England, it is held that a mere scintilla of evidence does not authorize a verdict for the plaintiff.

After stating this doctrine, an English law lecturer adds: "But in criminal cases the presumption is still stronger, and accordingly a still higher minimum of evidence is required; and the more heinous the crime the higher will be this minimum of necessary proof. The progressive increase in the difficulty of proof as the gravity of the accusations to be proved increases, is vividly illustrated in Lord Brougham's memorable words in his defense of Queen Caroline: 'The evidence before us,' he said, 'is inadequate even to prove a debt — impotent to deprive of a civil right — ridiculous for conviction of the pettiest offense — scandalous if brought forward to support a charge of any grave character — monstrous if to ruin the honor of an English Queen'."

In England, this rule is founded upon the very nature of the issue, and applies without distinction of tribunal, so that in civil cases, where the proof of facts equivalent to crime is involved, the same rule of evidence applies.

The reason of the rule is thus stated: "History shows how necessary is some such rule, emphatic and universal, in order to protect prisoners from the credulity which the shifting currents of prejudice will inspire about whatever offense, or classes of offenses, may for the moment have aroused popular indignation. No less enlightened a jurist than Bodin maintained, in an elaborate treatise, that persons accused of witchcraft ought to be convicted without further proof, unless they could demonstrate themselves to be innocent — 'for to adhere, in a trial for witchcraft, to ordinary rules of procedure, would result in defeating the law of both God and man'."

Lord Kenyon stated the doctrine in this homely fashion: "If the scales of evidence hang anything like even, to throw into them some grains of mercy."

Few lawyers, not State's attorneys, would wish to abolish this human doctrine. None would insist, however, upon that high degree of proof sometimes exacted by the Canon Law, as when it provided that no Cardinal was to be convicted of unchastity unless there were at least seven — or in Fortescue's time, twelve — witnesses. Add to this the further rule that in criminal cases the woman could not be a witness, and the protection of the Cardinal was as complete as was that of the adulterer, under the rule of the Koran, where the guilt of the accused must be supported by four eye-witnesses.

PRISONER'S STATEMENT.

The prisoner, under the common law, had the right, certainly if undefended, to make a statement in his own defense, not under oath. Under the Criminal Evidence Act of 1898, the prisoner is permitted, but not compelled, to testify, and that, too, whether indicted solely or jointly with another. When, however, he elects to testify under oath, he is safe from cross-examination except in three designated particulars. This Act, however, expressly provides that it shall not affect any right of the person charged to make a statement without being sworn, thus permitting the prisoner who does give evidence under oath (certainly if undefended) to add an argumentative, unsworn statement.

In Georgia, the prisoner may not be sworn and when he makes a statement cannot be cross-examined, unless he permits. In England, if he wishes, he may swear, practically safe from cross-examination, and add to his sworn statement, if he wills, an argumentative, unsworn statement.

FAILURE TO MAKE STATEMENT NOT COMMENTED UPON.

In England, the prosecutor must not comment upon the failure of the prisoner to become a witness, just as in the United States the State cannot comment upon the fact that the prisoner makes no statement.

COURT SHOULD SUM UP.

In one particular the views of the reformer prevail. English judges are permitted to sum up, and in modern times it seems to work well. In ancient days it was a mighty instrument of tyranny. In an English trial, before a trained, stolid, well-poised English judge, removed from the demagoguery of politics, the custom may be a wise one, especially so since the attorney for the Crown acts rather in a judicial capacity than as a fiery, rapacious prosecutor, seeking through popular convictions higher political honors.

This power in the Federal judges does not, for the most part, pervert justice. They are appointed for life or during good behavior. Their position largely removes them from the politics of the State and in a measure sets them apart and away from the passion, prejudices and excitement that from time to time so excite and mislead the public.

Our State judges, as a class, need no defense. They lose nothing in comparison with English or United States judges; but among them, here and there, will be found a weak brother, who cannot forget that he is elected by the people and whose ear cannot always be kept from the earth, in an effort to hear the tramp of the people. To such a one no greater weapon for harm can be given than the power to sum up before a jury. He ever sees over his head the whip of his masters, and he sums up not in accordance with the demands of justice and right, but in obedience to the rage and passion of the multitude.

It will be remembered that in 1881 the power to sum up was taken from the French judge, for partiality against the prisoner. Doubtless the French judges were honest men, but their temperament and environment unfitted them to exercise so delicate and dangerous a duty.

HUSBAND AND WIFE WITNESS FOR EACH OTHER.

As now in Georgia, under the common law the wife or husband of the accused was not a competent witness. Since the English Criminal Evidence Act of 1898, the husband or wife

is competent but not compellable to give evidence for the defense only, and only upon application of the accused. The prisoner's omission to call the husband or wife cannot be commented upon by the prosecution.

This change was evidently in the interest of the prisoner, and not of the State. The Crown could gain nothing except by cross-examination.

VERDICT UNANIMOUS.

Unanimity of verdicts has been the English rule from the earliest days of the common law. Mr. Blackstone says: "So that the liberties of England cannot but subsist so long as this palladium (unanimous verdicts) remains sacred and inviolate; not only from all open attacks (which none will be so hardy as to make) but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial."

The present English rule is:

"A verdict must be the utterance of twelve jurors; so that in the petty jury, as there are but twelve, unanimity is essential. But in any larger jury, such as a grand jury or a coroner's jury, or a jury on an inquisition of lunacy — and similarly with the Peers — a mere majority suffices, if it consists of twelve."

If unanimity is wise in England, where the jury qualifications guarantee fair intelligence, it is needed still more in Georgia, where in practice jury qualifications consist in age, gender and capacity enough to find one's way to the county seat upon the first Monday.

CRIMINAL APPEALS.

Our system is strongly censured because appeal is permitted the accused, but denied the State. If this is a sin, the English system has sinned beyond forgiveness. Except for errors upon the record, the common law provided no appeal in criminal cases.

To meet this difficulty the criminal judges, as did the judges of our Superior Courts in earlier days, held informal meet-

ings to discuss such troublesome legal questions as had arisen before them. In Victoria's time such informal meetings were superseded by a formal tribunal, "The Court for Crown Cases Reserved," to determine law questions, only, arising at Assizes or Quarter Sessions. By the Judicature Act, this jurisdiction was transferred to the High Court of Justice. Prisoners only, and not the Crown, could appeal and then not as a matter of right. In early times, the House of Lords also had criminal appellate jurisdiction, limited to errors of law upon the record.

There had been in English history instances of the execution of innocent men. Sir Edward Coke tells of the execution of an uncle for the supposed murder of a daughter, who was still alive. Shaw was executed in Edinburgh for the supposed murder of a daughter, who had in fact committed suicide. Eliza Fenning was executed in London for a supposed attempt at poisoning, and Jonathan Bradford for the supposed murder of a traveler, though the traveler was, in fact, slain by his own valet.

These and other cases impressed upon the English people the necessity for a Criminal Court of Appeals. Finally, one Adolph Beck was convicted, whose innocence was demonstrated after his conviction, although fifteen witnesses had been mistaken in their identification of him. The Treasury Department awarded Beck five thousand pounds.

In 1907 the Court of Criminal Appeals was established, with jurisdiction to review, in behalf of the prisoner only, all questions of law or of fact, and presided over by the Lord Chief Justice of England and the Judges of the King's Bench Division. It granted appeal to the accused, but denied it to the Crown.

Every prisoner, however, except those convicted at Petty Sessions, or on trial by peers of the realm, has: first, an absolute right to appeal on questions of law; second, by leave of the trial judge or of the Court of Criminal Appeals, to appeal on any question of law or mixed fact and law; and, third, a right, by leave of the Court of Criminal Appeals, to appeal

from the sentence passed upon him, except where sentence of death is fixed by law.

If the prisoner be poor, the Court may assign him, at public expense, a solicitor and counsel. Provision is made out of the public funds for all expenses connected with the appeal, including those of complainant's own attendance.

This Court is not one merely for the correction of errors, but is, as its name indicates, a real court of appeals. It may hear either documentary or oral evidence (whether introduced on the trial or not), in open court or by deposition. It may also, if it sees fit, appoint some expert to act with them, as an assessor, or appoint a special commissioner to report to them on any question which involves such a scientific or local investigation, or such a prolonged examination of documents or accounts as cannot be conveniently conducted before themselves.

It has jurisdiction to increase, as well as diminish, the sentence below. If substantial miscarriage of justice has occurred, from an error of law upon the part of the judge or by an unjust verdict of the jury, or from any other cause, conviction will be quashed and judgment of acquittal entered. If the conviction be for theft, the Court will review not only the theft, but the order of restitution as well. It may quash the sentence of the Court below and pass such other sentence, more or less, as it may see fit. Its decisions are usually final, but when a legal point of exceptional public importance has been raised, the case may be taken, by means of a certificate from the Attorney-General, from this Court directly to the House of Lords.

Our courts of last resort correct errors of law only, and have no jurisdiction to review facts. The Georgia prisoner, as to facts, is as helpless as was the English prisoner prior to the establishment of the Court of Criminal Appeals. If the jury convicts him, and there is any evidence to support the verdict, however so incredible, and no matter how certain the judges that the conviction is unjust, the highest courts of the State are powerless to aid him. How the reformers would

how! if the Supreme Court should, like the English Appellate Court, re-try and set aside every case wherein the jury had, in the opinion of the judges, made an unjust conviction!

To justify the absence of a real appellate criminal tribunal involves the assumption either that juries are always infallible, their verdicts never wrong, or that all trial judges are all-wise and courageous. No Georgia lawyer of experience can assume the existence of either presumption and be safe from the jurisdiction of the Ordinary.

The popular assumption that our courts are too ready to reverse is not sustained by a comparison with this English Court of Appeals. In 1913, one hundred and fifty-seven appeals reached a final hearing in that Court; of that number, only seventy-nine gained nothing. The Supreme Court of Georgia, during the October term, 1914, and the March term, 1915, decided sixteen criminal cases, affirming eleven and reversing five. The Georgia Court of Appeals decided, at the October term, 1914, and the March term, 1915, as reported in Vol. 16, one hundred and forty-five criminal cases, of which forty-nine were reversed and ninety-six affirmed.

THE PARDONING POWER.

The pardoning power is never questioned in England. Mr. Justice Blackstone said of it: "But the exclusion of pardons must necessarily introduce a very dangerous power in the judge or jury, that of construing the criminal law by the spirit instead of the letter; or else it must be holden, what no man will seriously avow, that the situation and circumstances of the offender (though they alter not the essence of the crime) ought to make no distinction in the punishment." So far from there being any outcry against the exercise of the pardoning power, Blackstone says: "To him (the sovereign), therefore, the people look up as the fountain of nothing but bounty and grace; and these repeated acts of goodness, coming immediately from his own hand, endear the sovereign to his subjects, and contribute more than anything to root in their hearts that

filial affection and personal loyalty which are the sure establishment of a prince."

Prior to the passage of the Court of Criminal Appeals Act, the pardoning power in England was used in the place of an appellate court. The Criminal Appeals Act has not affected the Crown's prerogative of mercy nor the duties incident thereto by the Home Secretary. He may still institute inquiries of his own, unlimited by the technical rules of evidence, when pardon is sought, or he may refer the case to the Court of Criminal Appeals—either the whole case or any special point in it.

Indeed, since the establishment of the Court of Criminal Appeals the pardoning power has been freely used. In England and Wales, in 1912, out of twenty-five death sentences, ten were commuted to penal servitude for life. In 1913, there were twenty-eight sentences of death, and of these twelve were commuted to penal servitude for life.

Reprieves may not only be granted by the Crown, but also by the judges. Except in cases of murder, the Judge of Assizes may not only pass upon delivery of judgment, but after delivery may pass upon its execution. By the repeal of almost all statutes fixing the minimum punishment, there has been given to English criminal courts almost complete power to remit punishment.

Under the statutory power of releasing first offenders without punishment, in 1913, 19,405 persons were released in England after being proved guilty of indictable offenses. Under the Probation of Offenders Act of 1907, "any court, whether of summary or of higher jurisdiction, which considers that, though an offense is proved, it is inexpedient to inflict actual punishment, may release the offender on recognizances to be of good behavior and to appear for judgment within three years if called on; it may also order him to pay damages and costs, and may place him under the supervision of a Probation Officer, whose duty will be to visit him periodically, report on his behavior, and 'advise, assist and befriend him'." If he behaves badly, he may be arrested and receive sentence

for his original offense. In 1913, one-sixth of the persons against whom indictable offenses were summarily proved were put under Probation Officers.

Justices of the Peace have wide summary jurisdiction in criminal cases, covering thousands of cases, and are invested with remarkable statutory powers of showing mercy, and they exercise it in nearly ten per cent. of their cases.

If a Georgia governor or Georgia judges should take such liberties with the verdicts of Georgia juries as do the Crown and judges with the verdicts of English juries, no one save the Coroner would have authority to adequately deal with the average Georgia law reformer.

EVIDENCE AND PLEADING SAME IN ENGLAND AS IN GEORGIA

The rules of pleading and practice are almost identical in both penal systems. In an English criminal trial, the quiet dignity and steady, firm hand and business methods of the judge, the dispassionate fairness and impartiality of the Crown attorney — “a minister of justice, not a litigant battling with the prisoner,” — the willing and strict adherence to the rules of evidence and procedure upon the part of counsel for the accused, the absence of all garish display, cheap trickery and blatant demagoguery, the serene, serious business attitude of the jury, the calm, respectful demeanor of the bystanders, might surprise and amaze the American lawyer, but he would hear no strange doctrine of evidence or legal procedure.

IF DEFECTIVE IN OPERATION.

If our system is defective in operation, it is the fault not of the system, but of the operators. If it is ineffectual in the enforcement of the law, the fault is chargeable to the judge, the solicitor, or to the jury — to one or all of them.

GEORGIA JUDGES.

Most Georgia judges measure to the full stature of an upright, honest, impartial judge; and that, too, in spite of their election by the people and the miasma of politics which

so threatens all judicial life and growth. Too often, however, the judge opens court with a stump speech to the Grand Jury, spends the term in nicely balancing and obeying public opinion, and closes it with a vote of the bystanders. Such a judge is a curse instead of a blessing, and under his guidance the best judicial system will halt and stumble and be saved from a complete breakdown only by its inherent strength.

GEORGIA SOLICITORS.

The Georgia Solicitor-General, handicapped as he is by politics and fees, does better than ought to be expected of ordinary human nature. From both he ought, for his own and the public's good, to be delivered. So delivered, the strong could not embarrass him and the weak and helpless would be sure of his protection, and he would lose much of that fierce partisanship and unbridled advocacy which an English judge would not for a moment tolerate in Crown counsel.

CROWN COUNSEL.

The Crown counsel occupies a dual position — each as binding as the other. He must convict and he must protect. In trials for life, "the Crown counsel are not 'litigants' battling with the prisoner, but a royal commission of inquirers dispassionately investigating the truth."

"He is a representative of the State, a minister of justice. His function is to assist the jury in arriving at the truth. He should not urge on them any argument that does not carry weight in his own mind or try to shut out any legal evidence that would be important to the interest of the person accused." As an illustration, "if the prisoner has written one letter confessing the crime and another retracting that confession, the Crown must not put the former in evidence without producing the latter also. Similarly, if the victim of an alleged assault has been examined by the police surgeon, this surgeon should be called by the Crown, even though his evidence negated the assault."

"In cases of homicide, every person present at the killing is usually called by the Crown as a witness; and this even

though he be near akin to the prisoner, or be subpoenaed by him, or be manifestly hostile to the Crown. Thus, in a case of poisoning, all the chemists who have made analyses for the Crown, alike those who thought they found poison and those who did not, may have to be called."

GEORGIA JURIES.

The jury system in America, as in England, is sacred. None but the most stupid can hope to abolish it; none but the wildest reformer would destroy it, and yet no other human institution so deeply affecting life and liberty is so inherently weak. In practice, it is drawn, even in capital cases, by lot from practically the full body of naturalized adult white men of the county; and, in some counties, a considerable number of negroes.

This pre-supposes either that all white men, re-enforced by a few negroes, are fitted by temperament, intelligence and character, to wisely try the accused, or that the accused ought to take the risk of drawing, by chance, only fit persons from so large a body. For either of these suppositions there is no sound basis. Out of so large a body not a few, from temperament, prejudice and lack of courage or capacity, are unfit jurors, and few men have the courage to mete out justice impartially when the multitude clamors for blood, and fewer still who have the clear intellect essential to untangling difficult and complicated cases.

Can there be greater legal heresy than that any white man outside the asylum and the chaingang can pass wisely and efficiently on every case? Such a theory is held in no other of life's activities. The ordinary man could not be convinced that it would be wise to select by lot from the body of the county's male adults a man to shoe a horse, shear a sheep, or dig a ditch; nor would an efficiency expert select by lot, even from the body of horse-shoers, sheep-shearers or ditchers.

That only intelligent and upright men shall be placed in the jury box are brave words; but what jury commission can select none but intelligent and upright men and will put none

others in the box? In this State, the fiction that all men of age to vote are intelligent and upright is almost, if not quite, as firmly fixed as is that other fiction that all men are born free and equal.

In spite of this, in most cases substantial justice has been and will be done; but in the future, as in the past, there will be cases of gross wrong and injustice. This would be so even if the system was inherently much stronger. No human system, no matter how wisely planned and courageously operated, will always work out the right and escape error and injustice.

JURY VERDICTS NOT SACRED.

That the verdict of a jury is infallible and sacred against inspection, reversal or avoidance is only the hypocritical cry of the ignorant or vicious politician. Every thoughtful man knows that the history of the past is full of unjust verdicts, made at the command of place and power, and that many others have been made and will hereafter be made, until human nature has reached a degree of perfection not yet attained, through inadvertence or ignorance, or under the spur and press of public passion and prejudice. Within the last two years, in one of the largest cities of this State, a man being held as a witness in a burglary case was tried and convicted, in spite of his violent protests, in the place of the burglar. Upon the discovery of the mistake the verdict was set aside and the real burglar was convicted by the same jury. The same witness readily identified the witness as the burglar and then the real burglar, and the jury sanctioned by their verdict both identifications.

There is no complaint when the decisions of a trained, learned, upright judge are set aside. Then why not the verdict of a jury, not learned, not trained for the work, selected not for their fitness to pass upon the particular case, but by lot? Our courts of last resort have no jurisdiction to review verdicts, but must let them stand, no matter how foolishly and viciously unjust. It is not too much to expect that some Adolph Beck case will arise in this State which will pave the

way for a real appellate court, in which the presiding judge cannot say in substance, "I believe the prisoner innocent, but I am powerless to aid him."

No one claims infallibility for all verdicts, but only for verdicts of guilty. Only verdicts of acquittal are ever vicious and corrupt. Indeed, verdicts are sacred only when they meet the approval of the people, and the people care but little unless the jury disregards the cry of "Crucify him! Crucify him!"

DO JURIES TOO OFTEN ACQUIT?

Grant that our juries too often acquit; the whole judicial system should not be indicted, but the jurors only. They are the masters of the facts, uncontrolled by judge, solicitor or defendant's counsel. If they err in acquittals, as doubtless they often do, why not in convictions? If honest, they will err both ways, not oftener one way than the other. Juries are not empaneled to convict, but to convict or acquit as justice may require. When in reasonable doubt, their imperative duty is to acquit.

There can be no complaint that our juries are lenient except in homicides. In other cases, the chance for wrongful acquittal is negligible. If the accused is a negro, as is usually the case, he starts with a presumption of guilty and quickly ends with a conviction.

The abnormal prevalence of crime, even if it exists, does not indict our legal system, but the character of our people. Violent crimes against the person are alarmingly frequent.

GEORGIA VS. ENGLAND AS TO CRIME.

In this, the fashion is to compare us with England, to our disadvantage. England has a homogenous population, ours is heterogeneous. The English people are Anglo-Saxons; they have never been, and could never have been, enslaved; 1,181,294 of Georgia's 2,613,096 population are of African descent, little over fifty years removed from the ignorance and dependence of slavery.

A riot of crime among the newly-emancipated slaves was,

and is, inevitable. They ignorantly translate freedom into license; and, as inevitably the association of these distinct races, the one but lately master and the other slave, has increased and provoked into action the criminal tendencies of both races.

England and Wales are densely populated. In an area of 58,340 square miles, it is estimated that in 1914 there was a population of 36,960,684, while Georgia, with an area of 59,260 square miles, has a population of only 2,613,096. It is much easier to enforce the law when the whole populace is under the eye and in the very presence of its officers.

The ordinary Englishman has his place fixed for him before his birth. For the most part, he knows his place, takes it, occupies it and is content with it. He does not think himself, and seldom does he push himself as, the equal of every other man in England. As a result, he seldom kills to maintain his personal dignity, nor does he often commit crime in the passion and press for place and wealth.

On the contrary, the birthright of every Georgian is equality with every man, inferiority to no man, and this birthright he is quick to maintain with hand or weapon. He is born to no place or position. His place is the highest and best he can buy or take, lawfully if he can, but too often unlawfully, if he can't.

As to crimes other than those of personal violence, the comparison seems not so much to our disadvantage. In England and Wales, in 1912, 67,530 people were tried for serious indictable offenses, and about fifteen-sixteenths, as usual, were for acts of dishonesty. For non-indictable offenses for the same year, 663,139 people were tried. The number, in each instance, did not materially vary for the year 1913.

England has, for more than two centuries, been free from serious internal dissensions and for a century saved from the corruption of any serious foreign war. A little over fifty years ago Georgia's white population, of military age, spent four years in the death grapple of our Civil War; our State was invaded and devastated, our property confiscated,

and our slaves made temporarily our masters and permanently our equals. "*Silent leges inter arma.*" Not only so, but the law does not regain her full power until the echoes of the conflict have long died away.

From 1890 to 1905, our courts have, in an effort to enforce the law, shed more blood than any State in the Union, as will be seen from the following table:

STATE	Legal Executions	Lynchings	*Population
Alabama -----	119	206	1,828,697
Arkansas -----	100	167	1,311,564
California -----	65	25	1,485,053
Colorado -----	14	22	539,700
Connecticut -----	14	---	908,420
Delaware -----	8	1	184,735
Florida -----	32	121	528,542
Georgia -----	172	237	2,216,331
Idaho -----	4	11	161,772
Illinois -----	56	15	4,821,550
Indiana -----	13	18	2,516,562
Iowa -----	2	4	2,231,853
Kansas -----	3	20	1,470,495
Kentucky -----	54	122	2,147,174
Louisiana -----	88	224	1,381,625
Maine -----	---	---	694,466
Maryland -----	50	11	1,188,044
Massachusetts -----	12	---	2,805,346
Michigan -----	---	4	2,420,982
Minnesota -----	15	4	1,751,394
Mississippi -----	97	249	1,551,270
Missouri -----	86	50	3,106,665
Montana -----	22	18	243,329
Nebraska -----	10	12	1,066,300
Nevada -----	5	3	42,335
New Hampshire -----	2	---	411,588
New Jersey -----	40	---	1,883,669

*Census of 1900.

STATE	Legal Executions	Lynchings	Population
New Mexico -----	---	---	195,310
New York -----	89	2	7,268,894
North Carolina -----	62	34	1,893,810
North Dakota -----	7	12	319,146
Ohio -----	43	9	4,157,545
Oregon -----	20	7	413,536
Pennsylvania -----	101	2	6,302,115
Rhode Island -----	---	---	428,556
South Carolina -----	65	85	1,340,316
South Dakota -----	8	3	401,570
Tennessee -----	63	154	2,020,616
Texas -----	140	183	3,048,710
Utah -----	5	---	276,749
Vermont -----	2	---	343,641
Virginia -----	92	71	1,854,184
Washington -----	19	12	518,103
West Virginia -----	23	25	958,800
Wisconsin -----	---	2	2,069,042
Wyoming -----	6	18	92,531
District of Columbia ---	18	---	278,718

PERCENTAGE OF ACQUITTALS.

The exact percentage of convictions in Georgia cannot be accurately given, but we know that, excepting crimes of personal violence, it is very large. It is estimated that in England, of all the persons indicted, three-sixths plead guilty, two-sixths are found guilty, and one-sixth are acquitted. This is one man acquitted out of every three trials. The severity of our system does not encourage pleas of guilty, but a conviction of two out of three would be a high percentage for Georgia.

It is stated by Mr. Kenny that "some three hundred felonious homicides take place in England every year, but less than a score of executions. There were fifteen executions in 1912 and sixteen in 1913. In 1897, there were fifteen executions in Georgia; in 1899, nineteen; in 1901, twelve; and for the fifteen years from 1890 to 1905, an average of eleven

and seven-fifteenths per year; more than five executions for every million inhabitants, as against less than one-third for every million in England.

DELAYS.

Our courts may not in all cases move as swiftly as English courts, but in the majority of cases the Georgia court violates the speed limit. It has been boasted that an English court can dispose of a murder or rape case in two hours and an arson case in four hours. This record is often met by Georgia courts. I have heard a Georgia judge boast that he had tried twenty felonies in one day — a record for speed that any English judge might envy. Comparisons unfavorable to American courts have been made between the Thaw and Rayne cases. Nothing could be more misleading. No one can tell what would have been the length of the Rayne case if he had had the position and wealth of Thaw and his family. For the poor, weak and defenseless the journey to the gallows is always a short one, but it is greatly lengthened in the case of the rich, influential and powerful. Many thugs met their fate during the nine years occupied in the impeachment of Warren Hastings. Lord Melville's impeachment in 1805 has been aptly designated as "not an impeachment of waste, but a waste of impeachment."

Speed is not everything, nor always to be desired. In the law, as nowhere else, is haste so likely to make waste. Lynching may, and it is feared often does, take place in the court-house. Not every trial is a trial by law. Judge Lynch can sit in the court-house as well as on the highway. When to his interest, he can sit by proxy as effectively as in person. A timid, time-serving judge, guarded by the military to hold off the mob until he can hold a farcial trial, is as good a substitute as Judge Lynch could wish, and far more dangerous to the public welfare he betrays.

LYNCHINGS.

Lynching now disgraces, and has long disgraced, the State of Georgia, more so than any other State except Mississippi

and Louisiana. From 1890 to 1905, there were in Georgia 237 lynchings; in Mississippi, 249, and in Louisiana, 224. Georgia now surpasses all of the other States of the Union. Of the 78 lynchings in the United States from January 1 to October 11, 1915, 77 took place in the South, and 14 in the State of Georgia. For the first six months in 1914, there were in the United States 34 lynchings. Of these, one-fourth occurred in Georgia. If press reports are true, Georgia led during the whole of 1915, and is still in the lead for 1916.

The public conscience has been somewhat dulled by the usually accepted theory that lynching was for rape. This theory, if ever correct, is not so now. The lynchings for the first ten months and eleven days of 1915, were: Murder, 29; rape, 10; theft, 10; murderous assault, 6; by night riders, 6; attempted rape, 4; alleged murder, 3; insults to women, 2; accessories to murder, 2; race prejudice, 1; unnamed cause, 1; wife-beating, 1; and poisoning mules, 3.

The lynchings for the first six months of 1914 were: Rape, 7; murder, 8; killing officers of the law, 4; clubbing an officer, a family of four: father, son and two daughters; stealing hogs, 2; disregarding warning of night riders, 2; insulting a woman, 1; writing an insulting letter, 1; wounding a man, 1; stealing meat, 1; burglary, 1; stealing cotton, 1; charged with stealing a cow, 1 (the cow which had simply strayed, finally returned home).

At first negroes furnished the majority of victims; now white men are liberally included. In 1915, 42 were negroes and 21 whites. For 1914, 24 were negroes and 10 whites. The lynching record not only disgraces the State, but if unhindered will destroy the social fabric.

For it, however, our legal system is not responsible. The mob lynches not by reason of any defect or delay in the law, but because the aroused passions of the mob want no law and will wait for no law, no matter how certain, no matter how swift. Lynching is not a protest against law, but is the outburst of primeval passions that ignores all law, waits on no court, and is satisfied with no punishment which it does not

select and which it does not inflict. No legal sentence is severe enough, no legal execution is brutal enough. The mob wants to rend and tear — mutilate and burn. It will not tolerate the sheriff as executioner. "Vengeance is mine," saith the mob, "and I will wreak it now in a whirlwind of passion and blood!"

The law is the child of civilization — the mob is the spirit of the jungle and it will no more wait upon the law than would the jungle on civilization.

In England, the King pardons and reprieves and the courts reprieve, and yet Englishmen do not lynch. In Delaware, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, and Utah, there was not one lynching from 1890 to 1905, and in New York only two, and yet in each of these States the Governor has often exercised the pardoning power. In South Carolina, in 1914, there were 437 pardons and 379 paroles, and yet for the first six months of that year Georgia furnished one-fourth of the lynchings in the United States.

The President of the United States has the pardoning power and often exercises it, yet it is the boast of the Federal judiciary that no Federal prisoner has ever been lynched.

The demagogue who excuses lynching or condones it under the pretense of defects in our legal system or the misuse of the pardoning power is a traitor to the State. And he is the arch-traitor of them all, who as the purchase price of its votes corruptly deifies the mob as the savior of the State from courts which he claims are inefficient, and from Governors he charges are faithless.

EQUALIZING EVERYBODY.

PAPER BY
JOEL BRANHAM,
OF ROME.

Mr. President, Brethren, Ladies and Gentlemen:

I ask pardon for what I am about to say. Do not for a moment imagine from the character of these remarks, or because of an uncontrollable disposition to merriment, that I am not a religious man. I believe in God and in the immortality of the soul. I do not believe in man-made creeds. My religion stands on the two great commandments — love to God and love to man. If I discharge my obligations to my fellow-man, I do my part. The mysteries of theology belong to God. Let us leave them to Him.

No man should have advantage of a woman, and no woman should have advantage of a man. They should be equal in burdens, equal in rights, equal in pain, and equal in pleasure. Adam and Eve were not created unequally or separately, notwithstanding the beautiful allegory, which many accept literally, to the contrary. They were created equally — at the same time, joined together back to back, and cut apart with a hatchet.

Neither Adam nor Eve had any advantage of one another, notwithstanding the stilted pretensions of the old gentleman, and the lie he told when the Lord surprised him stealing apples; like all other men when they are caught, he laid his fault on the old lady, and she, like an old-fashioned woman, took it uncomplainingly, though she was expelled from Paradise on account of it, and had to leave all her things behind her, except a few fig leaves bound around her middle, that did not cost Adam a cent. That Adam came first is an assumption contrary to all reason. No one can tell which

came first, the hen or the egg. We struggle in vain for the truth, but we cannot tell — we do not know.

It is to be presumed that Eve survived her subserviency to Adam. Their posterity should be equal and equalized in all things. They should have equal rights.

If a man provides a heaven for himself, and his friends, and a hell for his enemies, woman may provide a heaven for herself and her friends, and a hell for her enemies. Some husbands ascend — some descend — all wives ascend — bachelors, male and female, suspend.

Three little girls were boasting of their memory. One said: "I can remember when I was only three years old." The next said: "I can remember when I was only a year old." The youngest said: "That's nothing; I can remember when I was born." "Now Mary," said the elder, "How can you remember that?" "Why," said Mary, "because there were only two other persons present — the doctor and the nurse." "Where was your mother?"

"She was off playing bridge."

"Where was your father?"

"He was at the ball-game."

Justice knows no class, sex or race, but only mind and merit. Woman is inferior to man only in physical strength; in all other respects she is his equal — as great and as good, and she is entitled to equal rights, privileges and immunities. She should not be subjected to needless solitude, or confined to the companionship of one man, no more than one man should be confined to the companionship of one woman. When the children are all married and gone, and there are no longer socks to darn, or dresses to hook up in the back; when the dog is dead, and the cat strayed, and the husband wanders off to the city or to his club, and lingers until midnight, or when he is hanging around the house, listless, morose and discontented, and becomes a nuisance, why under these conditions should a woman be doomed to inactivity, monotony and solitude, her mind forced back upon itself, and, for the lack of battle with

contending thoughts of other minds, dwarfed and destroyed? God designed us for activity and for the companionship of more than one person. For a woman to spend her whole life with one man is horrible. She must be relieved of her lord a part of each day, if she has to run him out of the house with a broomstick. Think of it! He is there all the time, the same tone of voice, the same old story, the same complaint. It is enough to make a woman scream, and run her crazy, and it sometimes does — yet some husbands expect it. They introduce their wives as "my wife," and expect her to agree with them on all occasions and in all things. God forgive them! There are some women weak enough to submit to such domination. Poor things! I would not have one of them with a fortune thrown in. I like a lively woman — one who, on suitable occasions, can and will make the dust fly, and raise a storm, purify the air, wake up a sleepy man, and stand him on his feet before he knows what hit him. I saw a thing of this kind once. The man moved off slowly to the gate, stopped, and looked back mournfully and said: "Well, I'll be damned!"

The first child should be borne by woman; and the second child should be borne by — woman. The first child should be nursed by woman, and the second child should be nursed by — woman, and so on, clear down, always and forever. So if man should support the woman, then — man should support the woman, and give her money, dress, shoes, hats, gloves, and everything in the world she may need, or want — send her to the movies, pet her, love her, honor her, and let her rest — that is, if she ever has time.

Men should be permitted to marry, if they can, or remain bachelors if they cannot. So women should be permitted to marry, if they can, or remain bachelors if they cannot. If a man may court a woman, a woman may court a man, — either may pop the question. If an eligible man remains single on purpose, so may a woman. No decent man will remain single on purpose. There is no occasion, short of perversity, for

it, because, as a wise man once said to me, "A woman will marry as long as her fingers will bleed." Sometimes even old men are caught in their nets, some of them so old that they cannot lift their feet to the curbstone or suppress a sneeze.

Boys should be allowed to indulge in sweethearts, instead of cigarettes. They should have as many as three at a time for fear, should they have only one, of capture during the period of puppy love. Girls should have like liberty, the privilege of taking on, and flirting with at least three boys at the same time, for fear, should she take on only one, she may be kissed, caressed and swamped prematurely for life.

Boys and girls alike should have like privilege to remain single, with all its incidental pleasures and appurtenances, until they have sense enough to know whom to marry, what marriage means, and to forecast the comfort and love that comes from judicious marriages, and the misery and hate that follow ill assorted ones.

No boy should marry a girl unless she is willing, and no girl should marry a boy — it makes no difference how bad off she may be — unless he is willing; and neither under twenty-five years of age should marry the other, unless a majority of their parents are willing. Men and women, boys and girls, should be allowed to make themselves beautiful. A beautiful man, Lord! See him strutting before his mirror. No woman can stand a beautiful man. A beautiful woman. Lord, what a glory! She's a rainbow in a cloud, a star in the sky, a dew-drop in the morning sun, a glad smile in the gloom, a joy forever! God bless them all! Come, girls, "To arms, to arms, if they be but thine, woman," not in Mexico, but here. Beautiful rosebuds, morning-glories! Do not wait until you are faded flowers, drooping on your stems, beauty flown, and fragrance forever lost.

No family should be without children — the more the better. No family ever had a child, good or bad, to spare. As David says, "They are an heritage from the Lord, blessed is he who hath his quiver full."

Every child should be equalized, and allowed to select its own parents, otherwise it is not responsible for Adam's sin, or any other hereditary fault. Lord, how I would hate to have some men I know for my daddy.

The sexes should be equalized in habits and tastes, as well as rights:

If a man drinks, a woman may.

If a man smokes, a woman may.

If a man eats onions, a woman may.

So, if a woman scolds, a man may.

If a woman cries, a man may.

If a woman dresses, a man may.

If a woman undresses, a man may go low-necked, or V-shape in the back.

If a man has more than one wife, a woman may have more than one husband. If she resorts to that, it will surely equalize the husband.

If a woman should be silent, so should a man. If a man may speak, so may a woman. If a man may vote, so may a woman. If a man is a doctor, a woman may be a doctor. If a man is a lawyer, a woman may be a lawyer. If a man holds office, a woman may hold office. What a long and desperate struggle the Legislature of Georgia had before it overcame prejudice and made a woman eligible to the office of State Librarian. It was twelve years after the passage of the Act of 1896, which made woman eligible to the office, before a woman was appointed. Oh! the shame of it. Now examine the record of Mrs. Maud Barker Cobb, who has held that office eight years. We have never had a better Librarian — in fact, we have never had one so good, so capable, so courteous, so gracious, and so attentive to the duties of the office. Angelina Canfield, Mayor of Warren, Illinois, said: "My aldermen cannot put anything over me." Oh! for a woman's pluck to right things in Rome, in Macon, in Atlanta, and in Savannah. I can name a dozen women who would solve the Atlanta muddle, and the other muddles in these cities in a

week — women who would cut off graft, collect the taxes of tax-dodgers, discharge incompetents, and compel obedience to law.

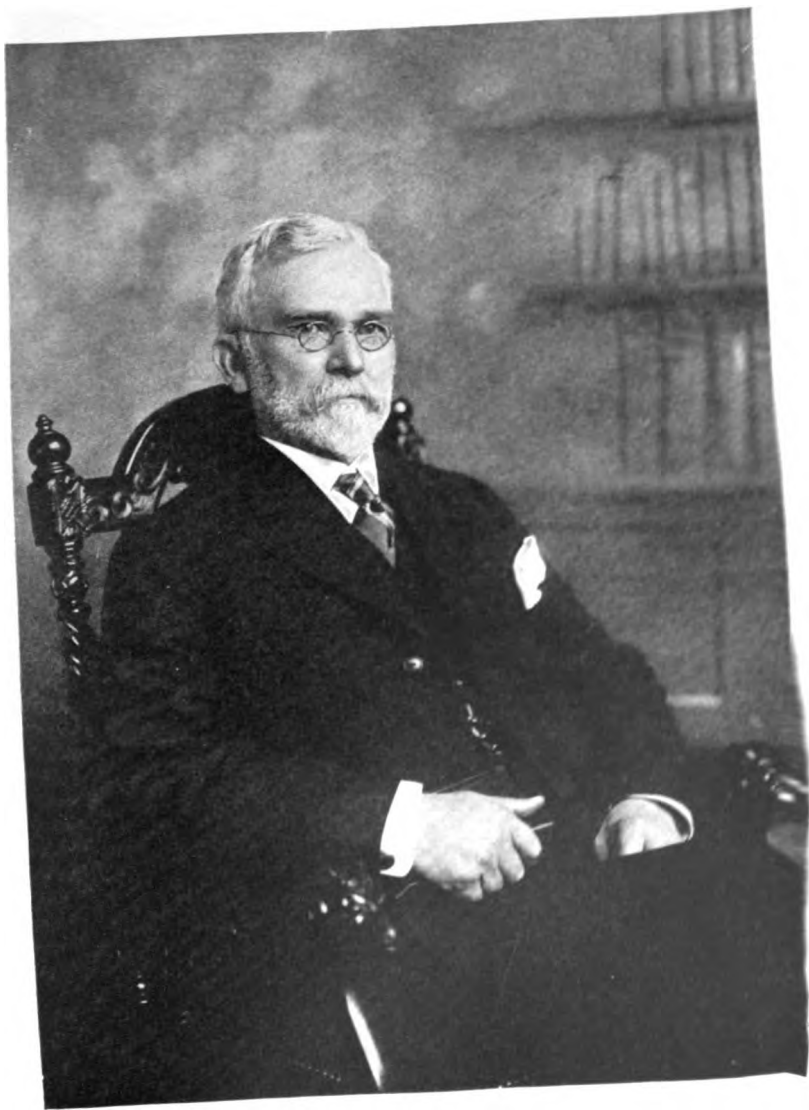
May our ambition, aim, and struggle be to equalize ourselves with others in love, respectively, — in the love of parents, husbands, wives and children, and of all persons, and of all living creatures; of Nature, and of Nature's God, so that, when the light of day fades, and shades of evening fall, and the Great Equalizer comes and looks us in the face, we may meet Him with a smile, unafraid.

THE SUPREME COURT OF GEORGIA.

PAPER BY
Z. D. HARRISON,
OF ATLANTA.

The above caption is the name given to the highest court of last resort in this State, in the Act of 1845, establishing that court. That act was passed pursuant to an amendment to the Constitution of 1798 which amendment was made by the concurrent act of the Legislatures of 1842 and 1843. Prior to that amendment the Constitutional provision for a judicial system was as follows:

"The judicial powers of this State shall be vested in a Superior Court and in such inferior jurisdictions as the Legislature shall from time to time ordain and establish." The Superior Court, established pursuant to that grant, had three justices for each county and a Chief Justice for the State at large. No higher court was authorized by any constitution of the State prior to 1843. The power to establish a court of review, with authority to set aside verdicts, was, no doubt, purposely withheld as inconsistent with that principle of government, then regarded as fundamental, that all power and authority resided in the people, and especially with the Anglo-Saxon conception of that principle, that the people were alike the source of authority and of justice. With that principle both the Legislative and the judicial departments of the government were made to conform. Legislators and judges were alike given short terms and other limitations equally significant were prescribed. Every juror was made the judge of the law as well as of the facts of every case submitted to him, and the verdict of the jury was deemed to be the ultimate expression of justice. Upon the juries, therefore, was placed the responsibility for the protection of society and for the administration of justice. The seat of power was not on the



J. D. Harrison

Bench, but in the jury box. The fear of a concentration of power in a few officials was sufficiently strong to prevent a disregard of any of the limitations imposed upon the judicial systems, authorized by the Constitutions of 1777, 1789 and 1798. But gradually that fear subsided. The good behavior of the Judges, their considerate demeanor and wise discretion in the exercise of their limited functions evinced a purpose on their part to conform themselves and their administrations to popular ideals. Such was the condition when the bill to amend the Constitution, so as to authorize the establishment of a Supreme Court, was passed by the Legislatures of 1842 and 1843. By that amendment there was imbedded into the Constitution of 1798 the foundation of a temple, destined to become the chiefest glory of the State. On that foundation, by the Act of 1845 establishing said court, the superstructure of that temple was erected. Since then, the light of truth has been kept steadily burning on the altar of justice, and the rays of that light have lightened unceasingly the jurisprudence of a great commonwealth and the juridical highways of all other States of the Union.

Most fortunate for the State was its first selection of the Judges of its Supreme Court. To them was to be committed the difficult task of adjusting to the existing judicial system a Supreme Court, without arousing latent fears that the powers of the jury might be minimized, and without exciting the prejudice of the judges and advocates of the Superior Courts; of impressing upon the minds and hearts of all the people the consciousness, that in this land of liberty, a power was inherent in the law, to which all men were alike subject — a power supreme, not ideal and illusive, but real, pervasive, persistent and potential — a power binding on all men, and especially requiring those charged with the duties of administration to observe the limitations imposed upon their authority; and, lastly, of securing that stability and uniformity in the administration of law, necessary, for the maintenance of a jurisprudence, which would render inviolate the fundamental principles of government. To this difficult task and

high duty was called Joseph Henry Lumpkin, Hiram Warner and Eugenius A. Nisbet.

Probably no trio of greater judges ever constituted a court. Most faithfully and efficiently did they discharge the high trust reposed in them. For eight years they labored together, and to them, all credit should be given as the founders of the State's jurisprudence. Few dissenting opinions were rendered by them. Conspicuously unlike in personal attributes, they were moved by a common purpose, and for them, all lines of vision seemed to converge on that purpose, the fulfillment of their high duty. A statue of each, built with his own hands, stands in Georgia's splendid temple of justice, there to commemorate his name and service as long as the State shall be blessed with a government dominated by a Christian civilization.

A fair characterization of no judge can be found in a single extract from any one of his opinions, nor perhaps from the full opinion, and yet such an extract may indicate a dominant characteristic, both personal and official. But no assurance can be given, that the following extracts are of that class, gathered as they have been from a hasty review of our reports and from opinions easily recalled.

The oral opinions of Chief Justice Lumpkin, as delivered from the Bench, are said to have been nobler expositions of the law than as afterwards written and published. His conception of the duty of the newly organized Supreme Court was stated as follows: "When we reflect, * * * that hitherto everything in the jurisprudence of the State has been fluctuating, and that we are just now upon the threshold of our newly compacted judicial system, * * * we feel the necessity and importance of settling every principle upon the most solid foundation." 1 Ga., 18.

His forensic power, under the spell of which it has been said, jurors would spring from their seats and utter audible response to his appeals, is recalled by the following peroration: "The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear *arms*

of every description, and not such merely as are used by the *militia*, shall not be *infringed*, curtailed, or broken in upon, in the smallest degree; and all this for the important end to be attained; the rearing up and qualifying a well regulated militia, so vitally necessary to the security of a free State. Our opinion is, that any law, State or Federal, is repugnant to the Constitution, and void, which contravenes this *right*, originally belonging to our forefathers, trampled under foot by Charles I and his two wicked sons and successors, re-established by the revolution of 1688, conveyed to this land of liberty by the colonists, and finally incorporated conspicuously in our own *Magna Charta*. And Lexington, Concord, Camden, River Raisin, Sandusky and the laurel-crowned field of New Orleans, plead eloquently for this interpretation!"

1 Ga., 251.

Such a peroration seems inconsonant with the making of aphorisms, and yet ten years later he uttered the following: "Forms are no longer anything — substance is everything."

14 Ga., 672.

Judge Lumpkin continued on the Bench as Chief Justice from its organization in 1846 until the day of his death, which occurred on June 4, 1867.

(For the sake of accuracy, it should be stated that the office and title of Chief Justice did not legally exist until the act creating the office became a law on December 7, 1866. From the organization of the court, Judge Lumpkin fulfilled the functions of Chief Justice, but was not technically, because not legally its Chief Justice, until said act became effective, which was less than six months before his death. A concrete illustration of the parsimonious treatment of the court by the Legislature, to the extent of withholding deserved honor as well as adequate provision of money.)

Judge Lumpkin's term of service was longer than has been rendered by any other Justice except Judge Warner, who as Associate Justice or Chief Justice served under the Constitutions of 1798, 1865, 1868 and 1877, under each of which the political conditions of the State were essentially different

from those under each of the others. Having resigned as Associate Justice in 1853, he was appointed by Gov. Charles J. Jenkins, as Chief Justice under the Constitution of 1865. The distinction of that appointment was heightened by the fact that Governor Jenkins had himself been a member of the Supreme Court, and by that experience, was specially qualified to make a wise appointment. The government of the State under the Constitution of 1865 having been superseded by reconstruction imposed by the Congress of the United States, the court was reorganized under the Constitution of 1868, when Judge Warner, a democrat, was appointed by a Republican Governor and confirmed by a Republican Senate as Associate Justice. This appointment must have been constrained by public sentiment. He again became Chief Justice in 1872, and served as such continuously until he again resigned in 1880, after three years' service under the Constitution of 1877.

Like Judge Lumpkin, Judge Warner was ever ready to discard forms for substance, but he would have more surely insisted, that the substitution should be made according to law. He would have expressed Judge Lumpkin's aphorism thus: "Forms are no longer anything, law is everything." His grip upon the law and its grip upon him was equally tenacious. How firmly it held him is shown in the conclusion of his dissent in the case of *Cox v. The State*, which is as follows: "The defendant may or may not be guilty, but whether he is or not, he was entitled to a fair, impartial trial, as provided by the Constitution and laws of his country; and not believing, according to my best judgment, that he has had such a trial, there is no power on earth that can extort from me, as a judicial officer, a judgment affirming his conviction." 64/423.

Judge Warner was not gifted with the eloquence of Chief Justice Lumpkin, nor was he as classical as was Associate Justice Nisbet, but in all of his opinions he was clear, strong and convincing and never failed to fearlessly follow his convictions of the law wheresoever they might lead.

For purity of diction Judge Nisbet was pre-eminent. His opinions run through the first fourteen volumes of Georgia Reports. All of them evince great assiduity and wide learning, and are characterized by elegance of style and force of logic. The selection of his best opinion has not been attempted, but with some degree of confidence the case of *Wilder v. Lumpkin*, 4 Ga., 208, is cited as containing a profound discussion of fundamental principles.

Equally valuable and important and probably more frequently cited is his opinion in the case of *Fish v. Chapman & Ross*, 2 Ga., 349.

Judge Nisbet's term of service on the Supreme Court Bench was eight years, these eight years for the court were years of constructive work and, for that reason, were probably the most fruitful years, of any like period, during its existence.

Judge Warner, having resigned in July 1853, Hon. Ebenezer Starnes was appointed to succeed him, and was elected in the following November for two years, the balance of Judge Warner's term.

Judge Starnes and his successor, Judge C. J. McDonald, who was elected in November, 1855, were the only judges of our Supreme Court, I have not personally known, either subsequent to or during their term of service.

A pleasing impression of Judge Starnes is afforded by his opinion in the case of *Roberts v. The State*, 14 Ga., 8, from which the following is quoted: "We are sorry to loosen the hold, which the strong arm of the law has upon these bad men. But they live in a land of laws — they are tried by a court which regards as almost holy, that maxim of our fathers, that every man is to be presumed innocent, until proved to be guilty according to law."

Judge C. J. McDonald, who as Governor, had strongly urged the establishment of a Court of Review, maintained, while on the Bench of the Supreme Court, the high standards set by his predecessors. In his dissenting opinion, delivered in the case of the *Bibb County Loan Association v. Richards*, 21 Ga., 592, which involved questions then novel and impor-

tant, he displayed rare powers of analysis and clearly revealed the usurious nature of the intricate contract of the Loan and Building Association, then under consideration.

Judge Henry L. Benning, when young, stalwart, fearless and ambitious, succeeded Judge Nisbet. Unlike Judge Nisbet, he was regardless of rhetoric and relied on logic to sustain his judgments. He quickly signalized his independence and self-reliance as a judge by his dissent, delivered soon after his elevation to the Bench, in the case of *Bishop v. Sanford*, 15 Ga., 1, in which, he reasoned as follows: "By the common law, a right never died, and for every right, there was a remedy, and therefore, as the right never died, the remedy never died."

Judge Benning was no less distinguished on the Confederate field than in Georgia's judicial forum, and surely, it cannot be inappropriate to here quote the opening stanza of Judge Bleckley's tribute to General Benning:

"Poor Southern eyes, already red
With weeping for your noble dead,
If tears are left you yet to shed,
Give some to soothe this latest woe —
For gallant Benning let them flow."

Judge Linton Stephens succeeded Judge McDonald in May, 1859. Laconic in expression, his expositions of the law were concise and exhaustive. Many of his opinions did not exceed a dozen lines. Here is one of half that length, and yet, long enough:

"If the complainant ever had any equity, it is clear he has settled himself out of it. He made a deliberate settlement of all the alleged fraud, with his eyes wide open. Parties may settle frauds as well as anything else, if they act with knowledge of the facts, and such a settlement is as effective when made by the parties, as when made by the court. He is here asking the court to act where he has already himself taken final action. There must be an end to litigation." 29 Ga., 42.

Judge Richard F. Lyon succeeded Judge Benning in January, 1869, and served one term. He often appeared to be

rugged and impetuous, and in expression he was usually terse and sometimes dogmatic. Therefore, his opinions are not specimens of polished compositions, but they are forceful. He was most fortunate in having for his associates on the bench, the first Chief Justice, and Justice Chas. J. Jenkins.

Judge Jenkins succeeded Judge Stephens in August, 1860, and continued to serve until elected Governor in 1866. The term of his service from August, 1860, to January, 1866, was a perilous period. The voice of reason could not be heard for the din of battle. Men rushed from the forum to the field. The year of preparation for war and the year of humiliation after the war, were quite as terrible as the years of conflict. During that whole period, courts and judges were of little consequence, and yet to the courts must be accorded the credit of having preserved at least the semblance of law and order. About four hundred and fifty cases were heard and determined by the Supreme Court of Georgia during the five and a half years Judge Jenkins was on the bench. They were not cases involving difficult problems and great principles, but in their consideration and decision, the contributions made by him inscribed his name in large letters on Georgia's scroll of eminent jurists. Gifted with high intellectual and moral endowments and having the charm of a kindly graciousness in all his intercourse with others, he became equally distinguished for notable achievements in the political arena. An adequate estimate of his work on the bench, of his service in the other departments of government and of his personal attributes would show him to have been a great magistrate, a wise statesman and a good man.

Judge Iverson L. Harris succeeded Judge Jenkins in January, 1866. At the same time Judge Dawson A. Walker was elected to succeed Judge Lyon. Both were removed from office by the process of reconstruction in 1868. During the term of their service, covering the period of reconstruction, the State was perilously near a condition of anarchy. With great courage and perfect fidelity to duty they faithfully fulfilled their functions and thus largely contributed to the main-

tenance of the judicial department of the State, so that to all successors in that department, was transmitted an orderly system instead of chaotic confusion.

And then a new dispensation dawned. The State Government in all its departments was to be reorganized under the new Constitution.*

[Before attempting a sketch of the court since its reorganization under the Constitution of 1868, I ask you to pardon an episode, personal in its nature. It will not be considered a part of this paper.

During Governor Jenkins' administration I filled a minor position in the Executive Department, and when the reconstruction Convention met in Atlanta, I went there to report to him, during the session of that convention, the plans and purposes of its leaders, so far as the same could be ascertained. By such precautionary measures he prevented surprise and caused the contents of the State Treasury and the seal of its Executive Department to be timely removed beyond the reach of the despoiler and to be safely kept until they could be restored to the rightful authority.

The campaign to ratify the Constitution, adopted by the Convention, quickly followed, and was the most exciting ever known in Georgia. The great men of the State, notably B. H. Hill, Howell Cobb and Robt. Toombs, took the stump to oppose ratification. A pamphlet, published by me, containing the Constitution and ordinances adopted by the Convention, and a list of all its delegates with statistical information concerning each, was the text book of many speakers during that campaign. The polls were controlled by the military, and ratification inevitably followed. After the excitement incident to the election, came a reaction. Deep despair, impenetrably black, seemed for a time to envelop the State. A dozen young men feeling that they must escape to a haven, where the flag of their country was the emblem of protection instead of oppression, agreed to meet in Atlanta and together

*At this point Mr. Harrison read a separate paper which is inserted here by direction given in a resolution of the Association. See pages 21, 22.

go to California. Pursuant to that agreement I arrived in Atlanta December 6, 1868. On the next day, in going from my hotel, without any special purpose, to the old City Hall, where the Convention was held and where the State Capitol now stands, I met Mr. B. B. de Graffenried. I had known him in Milledgeville as a Secretary in the Executive Department, during the administration of Governor Jos. E. Brown, and also as a member of the firm of Briscoe and de Graffenried, lawyers of good standing. He told me he had accepted appointment as Secretary of the Executive Department and would also be elected Clerk of the Supreme Court, the next day, and offered to appoint me as its Deputy. My surprise was complete. I asked for time to consider. He gave me one hour. Within that hour I accepted, and within that hour my destiny became fixed. On the next day, I was present when the court was organized and then began the work I have since continuously performed. Mr. de Graffenried qualified as clerk, announced my appointment as deputy, and immediately withdrew. I do not remember that he was ever afterwards in the court-room or the clerk's office. I was most kindly inducted into my duties as deputy by the reporter, Col. N. J. Hammond. Mr. de Graffenried having died, I was elected as his successor in January, 1871. Again, I beg pardon for such digression.]

The process of Reconstruction, so far as it affected the court was finished by the appointment and confirmation of Joseph E. Brown, as Chief Justice, and H. K. McCay and Hiram Warner as Associate Justices. These Judges reorganized the court on December 8, 1868. They were great men, distinguished for ability, learning and public service, and were then about to undertake their greatest work. New conditions and new problems existed. A new Constitution, containing novel provisions, had to be construed and made acceptable to a people, who had bitterly protested against its ratification. The difficulty of their task, was greatly increased by differences of opinion among themselves relative to some of the important questions arising under that Con-

stitution. Judge Warner differed strongly from his Associates as to the validity of those provisions of the Constitution, intended for the relief of debtors. Of the cases involving those provisions, or acts passed pursuant to the same, that of *Cutts v. Hardee*, 38 Ga., 350, was the earliest, and was exhaustively discussed in the opinion of the Court delivered by the Chief Justice and in the dissenting opinion of Judge Warner. Both of those opinions, aside from the personalities in each, are replete with learning and logic.

After two years of hard and effective work, such as characterized his career in the political arena, Judge Brown resigned in December, 1870, and was succeeded by Judge O. A. Lochrane, who tired of the work quickly, and resigned after one year's service. He had an easy, fluent style and reasoned clearly, as shown in the first opinion delivered by him, in the case of *Hill v. Wilkes*, 41 Ga., 449.

The vacancy occasioned by Judge Lochrane's resignation was filled by the promotion of Judge Warner, who was succeeded as Associate Justice by Judge W. W. Montgomery, who, like Judge Lochrane, was satisfied with one year's service. A distinctive feature of that service was his concurrence with Judge McCay in sustaining the constitutionality of the Relief Act of 1870, from which ruling Judge Warner dissented. Some of Judge Montgomery's friends did not agree with him in his views of that legislation, but none doubted the strength or sincerity of his convictions, or his courage to follow them. Judge Montgomery was succeeded by Judge R. P. Trippe, whose highly emotional temperament permitted him to serve less than two years. He and Judge McCay resigned in 1875, and as partners resumed the practice of law. Judge Trippe was succeeded by one no less emotional than himself but with more power of persistence — Judge James Jackson, who served as Associate Justice until 1880, then became Chief Justice and acceptably filled that office until the day of his death, January 13, 1887. Twelve years were required to complete the Statue that commemorates his service in Georgia's Temple of Justice. It is a noble statue.

It tells of his devotion and truth, of his love of justice, of his tenderness and mercy; and portrays the noble attributes of a just judge. For a sample of the material in that statue, examine *Shields v. Roberts*, 64 Ga., 370.

Hon. Logan E. Bleckley succeeded Judge McCay in January, 1875, and resigned in January, 1880, after five years of hard work. His reason for resigning, as given from the Bench, is expressed in his poem entitled, "In the Matter of Rest." After the much-needed rest, he was prevailed upon to resume service in January, 1887, when he succeeded Judge Jackson as Chief Justice, which position he held until 1894, when he was constrained to resign again because of overwork.

Judge Bleckley was indeed a marvelous man. He often appeared before this Association and was always accorded high and affectionate admiration. At all our meetings he is frequently quoted. Attempts have been made to delineate his character and define his personality, but they have been unsatisfactory, because of some quality in the man, that made itself felt, a quality illusive, indefinable, a something of genius that baffles description and defies categories. It is no disparagement to say that he was eccentric because against the background of his eccentricities, his genius and his virtues stand out the more clearly revealed. His opinions in the cases of *Ellison v. Ga. R. R. Co.*, 87 Ga., 691, and *Terry v. Rodaham*, 97 Ga., 278, illustrate the wonderful resources of his mind and his felicity and dignity of expression.

The Court lost by resignations two of its members in 1880. Judge Bleckley resigned as Associate Justice and Judge Warner as Chief Justice. This coincidence recalls Judge Warner's former resignation as Associate Justice and Judge Bleckley's subsequent resignation as Chief Justice. Each resigned first as Associate Justice and afterwards as Chief Justice. Judge Warner was succeeded as Chief Justice by Judge Jackson and Judge Bleckley as Associate Justice by Judge Martin J. Crawford, who left the Bench of the Superior Court to accept a place on the Bench of the Supreme Court, with its higher honors and far more onerous duties. He lived

to enjoy the honors and perform the duties of Associate Justice less than two and a half years. He laboriously searched the records of his cases for the facts and then with great care and skill applied the law with precision. He did not spare himself, but required of himself at all times the best service of which he was capable. That his standard was high is shown in his first opinion, delivered in the case of the Central Railroad Co. v. Brinson, 64 Ga., 475.

Hon. Willis A. Hawkins succeeded Associate Justice Jackson in 1880, and after a few months' experience declined to become a candidate for election by the Legislature. He had been a highly successful practitioner and presumably preferred the bar to the bench. His opinions are in the 65 Vol. of Georgia Reports and show a capacity for judicial work that is seldom excelled. He was succeeded as Associate Justice by Judge Alexander M. Speer, whose urbanity and learning gave to him an attractive personality. His term of service was only two years. A good example of his work on the Bench is shown in 69 Ga., 564, where for the first time in this jurisdiction, it was ruled, that a gift for the support and propagation of religion is a charitable trust and not within the statute of uses, whereby the legal title may be merged into the equitable estate, and that such trusts are by their nature continuing and executory.

In 1882, Justice Speer was succeeded by Hon. Samuel Hall, who at that time, was reputed to be the most erudite lawyer in the State. He had a memory and a power of concentration that were phenomenal, an insatiable fondness for the law and its literature and a persistent industry in its study, which made his mind the repository of a vast amount of learning that was always available for his use. Add to these intellectual qualities the moral virtue of integrity, such as characterized his life, integrity of word, thought and deed, and we have the essential qualifications of a great judge. For five and a half years he faithfully fulfilled every duty incident to his high station, and then became exhausted, and died from overwork.

It has been herein recalled that in 1880, two Justices, Warner and Bleckley, resigned because of overwork, and we should not fail to recall that in 1887 two Justices, Jackson and Hall, died, as is believed, from overwork. The memory of each is enshrined in the records of our highest tribunal of justice and is imperishable, but there can be no atonement for their sacrifice.

Hon. M. H. Blandford succeeded Justice Crawford in 1883. Native strength and mentality was his distinguishing characteristic. More thoughtful than studious, he acquired largely by observation. His experiences in the army did not inculcate studious habits. His services as Associate Justice were rendered from 1883 to 1890, which were years that severely tested the strength, mental and physical, of every Justice of that period. His opinions make a record, that will be highly esteemed by all of his successors on the Bench and at the bar.

His immediate successor on the Bench was Judge Samuel Lumpkin, who, having been first elected Associate Justice in 1890, became the first Presiding Justice in 1897. He officiated in that position efficiently and satisfactorily until disabled by sickness, which resulted in his death July 18, 1903. The record of his work evidence his patience and industry, his love of law and of justice, his integrity and nobility of character and constitute his enduring monument.

Next in sequence came Hon. Thos. J. Simmons, who succeeded Associate Justice Hall in 1887. He held that position, until he succeeded Chief Justice Bleckley in 1904, and thereafter without intermission he continued to discharge all the duties of that high office, until his last illness in 1905. Eighteen years of hard work was the term and quality of his service on the Supreme Court Bench. All who knew him recall the ease and dignity with which he carried the heavy burden of his office; and, they also recall his uniform courtesy to his associates on the Bench and to members of the Bar. He was patient, considerate, and efficient. With his big head and big body he moved steadily forward with perfect

composure, never repelling but always drawing. Common sense was his motive power. It made him potential and effective. The case of *Austin v. The Augusta Terminal Railway Co.*, 108 Ga., 696, is here cited, not as his best opinion, but as fairly showing his cogent powers; and, also because in the dissenting opinion in that case, we have a good illustration of Mr. Justice Lewis' power of discrimination. Hon. Henry T. Lewis became Associate Justice in 1897. With a highly nervous temperament and a brilliant mind, he worked persistently and effectively. After nearly five years of tense service, he was constrained by failing health to resign, September 2, 1902. But, his vitality had been sapped, and soon thereafter, he was numbered among those who have died from overwork on Georgia's Supreme Bench.

Hon. Henry G. Turner was appointed Associate Justice in July, 1903. After about eight months' service, he resigned April 1, 1904, on account of sickness, and died June 9, of the same year. He had achieved distinction in the legislative department of the State Government and of the United States Government before his elevation to the Bench. During his brief service as Associate Justice he displayed such aptitude and ability for judicial work as presaged highest judicial honors.

Hon. Joseph R. Lamar was appointed Associate Justice, May 13, 1903, and resigned that office April 10, 1905. In December, 1910, he was appointed to be a Justice of the Supreme Court of the United States. The latter appointment was probably induced in large measure by his work on the Bench of the Supreme Court of Georgia. Memorial proceedings in both of those tribunals, commemorative of his life and character, have been recently held, and constitute an enduring tribute to his memory. In the memorial read by Mr. J. C. C. Black in the Supreme Court of Georgia, this paragraph appears: "The high honors he enjoyed came to him unsought. Using a much-misused word and without flattery, which he never used of others, and of himself would not receive with favor, which is an offense alike to good

morals and good taste, we call him a great jurist, a great judge, and a great man."

Lack of time and space precludes more than briefest reference to the terms and work of the ex-Justices, now living, and of their Honors, the Justices, now on the Bench. The cases of each, hereinafter cited, have been selected with some care, and the opinion in each is believed to be a good example of the work of the Justice delivering it. The citations follow a statement of the term of service of each Justice, who is named in the order of his appointment or election, all being given without comment.

Hon. Spencer R. Atkinson. Appointed Associate Justice in October, 1894, and resigned in November, 1897.

Benson v. Abbott, Parker & Co., 95/69; *Johnson, et al. v. Gordon, admr.*, 102/350.

Hon. W. H. Fish. Elected by the people Associate Justice in December, 1896, became Presiding Justice in July, 1903, and Chief Justice in September, 1903.

Conley v. Buck, 100/187; *Rylander v. Allen*, 125/206; *Morel v. Hoge*, 130/625.

Hon. Andrew J. Cobb. Elected by the people Associate Justice in December, 1896, became Presiding Justice October 2, 1905, and resigned October 12, 1907.

Park, Treasurer, v. Candler, Governor, 113/647; Dissenting opinion in *Park v. Candler*, 114/481; *Pavesich v. New England Life Ins. Co.*, 122/190; *City of Dawson v. Dawson Water Works Co.*, 106/696.

Hon. W. A. Little. Elected by the people Associate Justice in December, 1896. Resigned in January, 1903.

Powell v. The State, 101/9; *Hayden v. Mitchell*, 103/431; *Park v. Candler*, 114/466.

Hon. Samuel B. Adams. Appointed Associate Justice in September, 1902, to succeed Justice Lewis and accepted until November, 1902.

Stubinger v. Frey, 116/396; *W. & A. R. R. Co. v. Hunt*, 116/448.

Hon. John S. Candler. Elected Associate Justice in 1902, resigned January 15, 1906.

Sanford *v.* Fidelity Co., 116/689; Gardner *v.* Georgia Railroad & Banking Co., 117/552; Wilcox *v.* Kehoe, 124/484.

Hon. Beverly D. Evans. Appointed Associate Justice in April, 1904, and became Presiding Justice in October, 1907.

Atlantic Coast Line R. R. Co. *v.* Postal Tel. Co., 120/268; Southern Ry. Co. *v.* Atlanta Stove Works, 128/207; Crawford *v.* Wilson, 139/654.

Hon. Joseph Henry Lumpkin. Appointed Associate Justice in April, 1905, to succeed Mr. Justice Lamar.

L. & N. R. R. Co. *v.* Wilson, 123/62; Muscogee Mfg. Co. *v.* Eagle & Phenix Mills, 126/210; Southern Ry. Co. *v.* Milton, 133/277.

Hon. Marcus W. Beck. Appointed Associate Justice September 14, 1905.

Forlaw *v.* Augusta Naval Stores Co., 124/261; Marshall, *et al.* *v.* Floyd County, 88 S. E., 943; Valdosta M. & W. R. Co. *v.* Bank, 144/761.

Hon. Samuel C. Atkinson. Appointed Associate Justice in 1906.

Southern Flour & Grain Co. *v.* North Pac. Ry., 127/626; Drawdy *v.* Hesters, 130/161; Hanson *v.* Owens, 132/648.

Hon. Horace M. Holden. Appointed Associate Justice in October, 1907, resigned October 30, 1911.

Atlantic Coast Line Railroad Co. *v.* The State, 135/545; Gray *v.* McLendon, 134/224; Crumley *v.* Scales, 135/300.

Hon. Hiram Warner Hill. Appointed Associate Justice October 30, 1911.

Central Georgia Power Co. *v.* Mays, 137/120; Cowart *v.* Fender, 137/586; East Atlanta Land Co. *v.* Mower, 138/380; Palmer Brick Co. *v.* Woodward, 138/289.

The foregoing inadequate sketch of Georgia's Supreme Court will be utterly futile unless it should occasion suggestions of methods of relief which shall be adopted, and be made effective.

Since the reorganization of the Court in 1868, the deaths of four of its Justices have been attributed to overwork, and of the thirteen resignations, nearly all should be attributed to the same cause. And, notwithstanding the increase in 1897 of the number of Justices and the establishment of the Court of Appeals in 1907, the strain on its Justices was never so tense as it is to-day.

A large number of cases returned to the last October term are still undecided, and, announcement has been made that oral argument cannot be heard in cases returned to the March term. Such argument ceased to be helpful, not until after it became impracticable for the Court to decide every case soon after it was heard. Can oral argument be safely dispensed with under existing rules of practice and existing conditions? If want of time precludes oral argument, can the court by the exercise of the most persistent diligence ascertain the facts, often obscured by voluminous records, and then consider and determine the assignments of error within the limit of time prescribed by law? These are questions that call for immediate consideration and action by this Association. Reference to the Legislature will not suffice because immediate relief cannot come from that source. Such reform in judicial procedure as the Legislature might provide would involve a reorganization of the judicial system, for which an amendment to the Constitution would be required. Such a process is too slow for a condition so urgent. Then the only source of the help, needed for the Court, is the Bar.

In 1873 three Justices constituted the Court. Practically all cases were decided within a few days after argument. Oral arguments were heard and the cases tried, as now, on the records. Six hundred and fifteen cases were returned to the January and July terms of that year. The task before the Court appeared to be impossible of accomplishment. For its own relief, the Court adopted a rule requiring counsel for the plaintiff in error, to make an abstract of so much of the pleadings and evidence as was material to a clear understanding of the questions involved and, to a correct decision of the

assignments of error insisted upon. Counsel for defendant in error was allowed to specify in writing the defects, if any, in the abstract, and the Court was relieved of the duty of opening the record except to verify the abstract, when its accuracy was questioned. For thirteen years the dockets were cleared under the operation of that rule. Without that labor-saving device, the annually increasing task could not have been accomplished. Judge Bleckley worked for five years under that rule, became tired and announced his resignation in the poem hereinbefore cited. Soon after his return to the Bench in 1887 as Chief Justice, the abstract rule was superseded by another, known as the "Index Rule." But alas! there was no lawyer in Georgia, who could make such an index as Judge Bleckley conceived and as the rule required. After one year of experimentation, it was superseded by a rule requiring official reports of all cases before argument. This rule lasted eighteen years, or until 1904, when it was discontinued because the duty imposed by the rule on the Reporter became impossible of performance. It is scarcely conceivable that the Court could have cleared its dockets without the aid of these rules, during the thirty years they were of force. The conditions which required their adoption, now strongly persist and afford urgent reasons for their re-adoption in substantive form.

Brethren of the Bar, as officers of the Court and as its chief beneficiaries, it behooves you to petition the Court at once, to adopt such rules, as will secure for it greater assistance from the Bar and thereby avoid those dangers that now seem imminent, when delay of justice shall become a denial of justice.

CONCERNING LYNCHING.

PAPER BY
ROBERT C. ALSTON,
OF ATLANTA.

To the President of the Georgia Bar Association, My Fellow Members, Ladies and Gentlemen:

In discussing the subject assigned, it is my purpose to treat it as though all persons who hear this address, or to whom it may come, are entirely convinced that lynching is unlawful; that it is immoral; that it is degrading; and that the custom ought not to exist.

Lynching is done by those persons who either are of an abandoned heart; or, in a spirit of passion and of grievance, give way to sentiments and desires which are unworthy.

It is not the purpose of this paper to treat with the default of courts as organizations, or of judges in any particular case. In so far as the failure of justice is concerned, it will be dealt with only as a system.

A people as a whole move according to their self-interest. There are occasions when some of the people, and still rarer ones when all, or nearly all of them, yield to considerations either of lofty sentiment or of unworthy desire; but those are only sufficient to prove the rule. The intensity of the state rights feeling which existed in this State was due to three things:

The tariff;

The necessity for protecting the institution of slavery under State laws. As the sentiment outside of the State, and within the Federal Government, against slavery grew, the propensity for the doctrine of State rights within the State increased;

Protection against the Indians. The State's controversy with the Federal Government concerning the removal of the Indians from the Northern part of the State, in which the Federal Government appeared to the citizens of the State to be either slow or negligent in the performance of treaty obligations, drove this State to lengths of State rights, and to resistance to the United States Government which had not been equalled prior thereto nor since.

The experience of the State in the Reconstruction Era, and especially in the earlier days thereof, left its white people with a determination that the government of this State should be in the hands of its white citizens. This was the result of both self-interest and altruistic impulses. It is not the purpose of this paper to break down that determination. It is my purpose to speak to you to the end that the people of this State do nothing which imperil this condition.

It has been my observation that in the accomplishment of great purposes of life, men who have left large impress upon the pages of history have had one main object to which all others were subordinated, in so far as it was necessary to do so in the accomplishment thereof. I need not give you illustrations of this. It is sufficient to remind you that Mr. Lincoln, during his Presidency, made the preservation of the Union the paramount thing, and he was at all times willing to sacrifice all else that needed to be sacrificed for the attainment of that purpose.

The government of this State by the white people, under the laws made by them, will continue only so long as it is good government. My observation has been that no statute, however firmly fixed it may appear to be, is a permanent one unless it deserves to exist. You may take many illustrations of things which appear to be firmly fixed in law and in fact, and find that they pass away when they cease to serve a useful purpose. There is no more fitting illustration of this than the institution of slavery. When it had finally become firmly established in the minds of the majority of the people that this institution had served its purpose, the means was found

to destroy it, drastic though it was, yet that institution appeared to be protected by express and tacit constitutional recognition, and by the lack of power in the Federal Government as determined by the highest tribunal of the country.

The Indians were certainly the rightful possessors of this country. That was manifestly so as against the claims of persons who came from a foreign land, speaking a foreign tongue, with different ideas and ambitions. But there was an adjudication in that unseen tribunal which passes upon the higher rights of a people and upon the destiny of nations, that those persons were unfit to be the possessors of the opportunities then in their charge, or the guardians of so much of the future destiny of the human race; and in response to that adjudication (written nowhere save in the consciences of men), those people, made of many tribes and nations, have practically passed from the face of the earth.

Over and over again we have seen persons, natural and artificial, entrusted with unfettered power, and finally there becomes fixed in the minds of men the idea that the power has been vested in unfaithful hands; that it is being used too much to subserve the selfish interests of the persons to whom it has been entrusted, and gradually the trust is withdrawn and the power reclaimed.

When the white people of this State decided to take to themselves the power of government of all the people within its confines, the obligation was immediately imposed upon them that the Government should be just, that it should be equal, that all persons should have the equal protection of the law, that none should be deprived of life, liberty or property without due process of law. By due process of law was meant substance, not form; the reality, not the semblance.

When, by custom, the colored race was deprived of the ballot, and when again this custom was practically written into the law, and when, by common consent, practically all of the white people of the largest State east of the Mississippi River united in the purpose that this State should be governed by white people, these facts imposed upon the white people the

duty of seeing that those citizens who had been deprived by that act of participation in the Government, should receive at their hands that equal protection of the law and that due process of law to which they were entitled; but which they had been rendered unable to procure by their own hands. That this is a moral obligation, as well as a constitutional duty, none of us will deny; and in asserting the power of the white man to exercise the sovereign power of the State, we have imposed upon ourselves this limitation; and we have written into the doctrine of State rights the duty that it shall preserve to those citizens of the State who do not participate in government, the rights which are guaranteed to them by the laws which are of force within the State. Some of these rights and some of these laws are not of the making of the State, and in so far as they are not of the making of the State, it is befitting for us to ask whether or not the power which has created them has not the right to look down into the State Government to see whether those rights are being preserved and are being protected by those persons who have become the keepers of the State's sovereignty.

Under the Dred Scott decision, persons of African descent could not acquire citizenship in the United States. As a matter of fact, what was citizenship of the United States, independent of citizenship in the State, was nebulous, if there was any such thing as citizenship of the United States apart from citizenship in the State prior to the Fourteenth Amendment. The Fourteenth Amendment provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Congress is given power to enforce, by appropriate legislation, the provisions of this Article.

The effect of this Amendment was to make negroes citizens both of the United States and of the State wherein they resided. It had the further effect of depriving the States of the power to say who are its citizens, in so far as the State should undertake to say that any person born or naturalized in the United States and resident therein is not one of its citizens. So the privilege of citizenship is derived by the colored man, not from a grant on the part of the State, but from a grant made directly to him by the Federal Government, and the State has no power to deny that which has been thus granted.

It has been held that the provisions of this Amendment, in so far as they relate to the privilege or immunities of citizens of the United States are limitations upon the States rather than grants to the citizens, and that its provision in reference to the deprivation of any person of life, liberty or property without due process of law is likewise a limitation on the State, and also as to the denial of equal protection of the law.

Let us take some notice of the laws which have been passed by the Federal Congress in pursuance of the powers given by the above mentioned Amendment, and which have been held to be valid:

Section 5508 of the Revised Statutes, which is taken from the Act of May 31, 1870, is as follows:

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000.00 and imprisoned not more than ten years, and shall, moreover, be ineligible to any office or place of honor, profit or trust created by the Constitution or laws of the United States."

A part of Section 1980 of the Revised Statutes is as follows:

"If two or more persons in any State or Territory conspire

or go in disguise on the highway or on the premises of another for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the law; or of equal privileges and immunities under the law; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the law; or if two or more persons conspire to prevent, by force, intimidation or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner towards or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen, in person or property, on account of such support or advocacy in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whether another is injured in person or property, or deprived of having or exercising any right or privilege of a citizen of the United States, said person so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation against any one or more of the conspirators."

This is taken from the Acts of July 31, 1861.

These Acts are construed to apply only to such rights as are granted by or dependent upon the Constitution, and valid and constitutional laws of the United States.

One of the matters which has been determined by the Supreme Court to be within the protection of these laws is the right of the Federal Government, by penal laws, to prevent discrimination against negroes serving on juries; and in *ex parte* Virginia, 100 U. S., 339, the prosecution was maintained and conviction upheld, when the Judge of a County Court, whose duty it was to draw the juries for service, had discriminated against negroes in such jury service.

In *Neal v. Delaware*, 103 U. S., 370, it was held that the exclusion, because of their race and color, of citizens of African descent from the Grand Jury that found and from the

petit jury that was summoned to try, the indictments, if made by the Jury Commissioners, without authority derived from the Constitution and laws of the State, was a violation of the prisoner's rights under the Constitution and laws of the United States, which the Trial Court was bound to redress; and the remedy for any failure in that respect is ultimately in this Court upon writ of error. The Court held that the exclusion of negroes from such Grand and petit juries, by officers charged with their selection, although such exclusion was no doubt by State Constitution or laws, denies the equality of protection secured by the Federal Constitution and law.

It has been more than once held that rights and immunities created by, or dependent upon the Constitution of the United States, can be protected by Congress. The form and manner of protection will be such as Congress, in the legitimate exercise of its legislative discretion, shall provide. These may be varied to meet the necessities of the particular rights to be protected.

In the case of *Strauder v. West Virginia*, 100 U. S., 303, a law which denied colored persons the right to sit on juries was declared void. The Court said:

"It (the Fourteenth Amendment) was designed to assure to the Colored Race the enjoyment of all the civil rights that, under the law, are enjoyed by white persons, and to give to that race the protection of the General Government, in that enjoyment whenever it should be denied by the States."

The Court also said:

"It is not easy to comprehend how it can be said that while every white man is entitled to a trial by a jury selected from persons of his own race or color, or rather, selected without discrimination against his color, and a negro is not, the latter is equally protected by the law with the former. Is not protection of life and liberty against race or color prejudice a right, a legal right, under the Constitutional Amendment?"

The Act of Congress of March 1, 1875 (18 Stat., Par. 3, 336), enacts that:

"No citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified from service as grand or petit juror in any Court of the United States or of any State, on account of race, color or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors, who shall exclude or fail to summon any citizen for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than \$5,000.00."

This was held to be constitutional in the case of *ex parte Virginia*, *supra*. The Court laid stress upon the provisions of the Fourteenth Amendment, especially:

"No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States. * * * Nor deny to any person within its jurisdiction the equal protection of the law."

And upon the last Section, which gives Congress the power to enforce its provisions by appropriate legislation.

One of the privileges or rights granted the colored man by this Amendment is citizenship; another is that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; another is, nor shall any State deprive any person of life, liberty or property without due process of law; another is, nor deny to any person within its jurisdiction the equal protection of the laws.

If a County Judge can be punished for refusing to draw his jury so as to include any of the negro race; and if exclusion of negroes from the jury list is sufficient to deny equal protection of the law to a defendant who is to be tried by a jury to be drawn therefrom, the question arises as to why may not the Federal Authority protect one of its citizens while in confinement or custody awaiting trial by a jury, with the composition of which it has exercised material power?

Why is not a refusal to put into operation the laws against lynching as much within the jurisdiction of Congress as is the refusal to obey a State law by a Judge in drawing a Jury?

If Congress can punish a Judge for refusing to include any negroes in the jury list for the purpose of trying a negro; why can it not punish a Sheriff for refusing to protect a negro while awaiting trial?

If Congress has the power to enforce, by appropriate legislation, the provisions which prevent a State from taking life and liberty or property of its citizens by due process of law, why may it not determine that in order to fulfill this guarantee it may make the Sheriff directly amenable to its jurisdiction in such matters?

It is, of course, first the duty of the citizen to refrain from lawlessness; and thereby deprive the general government of excuse for this interference with State laws.

It is next the duty of the State to so order its laws, that the insufficiency of them will not be so glaring and atrocious.

No one who has the slightest knowledge of the subject doubts but that the laws of this State are inadequate to the subject, both as to enactment and administration.

The system is such that they always will be inadequate in administration unless they are materially altered.

There is usually much public sentiment against the accused who is lynched; the Sheriff is elected by the people and becomes thoroughly awakened to the demands of his constituents; if he fails in the discharge of his duties in this respect, the triors are to be selected from the lynchers and their friends; if he discharges his duty he will incur the enmity of those whom he opposes and their friends. So he reasons that it is better to be overpowered, to be surprised or to be away from the jail.

No serious attempt made by a jailer to prevent a lynching in Georgia has been brought to light in a long time. This does not mean that there are not, and have not been, in Georgia, jailers who would discharge their duties in this behalf. No doubt there have been, and are many such. The very fact that there are such is sufficient in and of itself to often prevent the crime in the jurisdiction of such officers.

This defect in the State's laws is glaring, and has existed for

a long time in spite of much provocation. The first authority to give heed to this condition is the State. By its own enactments it should reserve this source of initiative. Sheriffs form a part of the administrative or executive departments of the State. They should be made accountable to the Executive Head of the State in such matters; or if not to him, then they should, in such cases, be amenable directly to the Supreme Court exercising original jurisdiction.

The Governor can remove a Railroad Commissioner, why not a Sheriff; the power need only be written into the law.

I venture that such a provision, simple as it is, would prevent a very great part of the lynchings in this State; it would remove the excuse of interference by the Federal Government in the internal affairs of our State.

Citizenship implies the existence of:

"A political body established to promote the general welfare and collective, as well as individual, rights of those composing it." (Wise on Citizenship, 2.)

Let us remember that citizenship of the colored man was forced on the States by the Fourteenth Amendment and was granted as to the Federal Government by the same Amendment. With the creating of this citizenship there went the power to make it effective by appropriate legislation.

On May 1, 1875, Congress passed an Act called the "Civil Rights Act"; a part of it is as follows:

"That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, on land or water, theatres and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude."

Cases arose in Kansas, California, Missouri, New York and Tennessee and were argued together. They are known as the "Civil Rights Cases," 109 U. S., 3.

Those cases grew out of indictments, or informations, for denying persons of color accommodations at hotels; out of denying persons of color the privileges of a theater; and out of the refusal of a conductor to allow a colored woman to ride in the car reserved for white women.

The Supreme Court of the United States held this Act unconstitutional; that it was not supported by either of the Amendments upon which it was based.

Mr. Justice Harlan, of Kentucky, dissented in an opinion covering thirty-six pages of the report.

The South owes a deep debt of gratitude to this Court for that decision. The opinion was written by Mr. Justice Bradley, who went to the bench from New Jersey.

Let us not forget that the Act itself has been passed by a majority of both branches of the two Houses of Congress and has been approved by the President of the United States.

This case upholds the case of *ex parte* Virginia, where the Judge was convicted for refusing to place negroes on the jury list. The Court held that in the "Virginia case, the State, through its officers, enforced a rule of disqualifications which the law was intended to abrogate and counteract." But the Court says:

"Of course, legislation may, and should be provided in advance to meet the exigency when it arises; but it should be adopted to meet the mischief and wrong which the amendment was intended to provide against; and that is, State laws, and State action of some kind, adverse to the rights of the citizen secured by the Amendment."

If a State makes a practice of failing to secure equal protection of the law or due process of law to the colored race under certain circumstances, may not Congress determine that an exigency has arisen which may be cured by Federal enactment?

It appears now to be firmly fixed by the decisions of the Supreme Court of the United States that the Fourteenth Amendment does not give the Federal Government the

power to make a municipal code for the Government of its citizens resident within any State. But we frequently find the Federal Government making investigations of, or lending a hand in local conditions, such as strikes in Pennsylvania or in West Virginia — as to which no right can possibly exist except that the persons at interest are citizens of the Federal Government.

We are under the greatest obligation to the Judiciary which so far has so limited the construction of that part of the Fourteenth Amendment which grants citizenship to the colored people that it does not give the Federal Government power to legislate concerning the affairs of the daily life of its newly made citizens.

Should that power break over the Judicial bulwark, it would come with torrential effect, the end of which none can predict.

Does it not behoove every citizen to see to it that there shall be no failure of the State Government to adequately give due process of law and equal protection of the law to all of its citizens at all times, and under all circumstances? Are not the rights to be safeguarded of such vital import to the continuation of such power that the real enemy of the State is he who contributes to the breaking down of its laws and the adequacy of its government?

"The prohibitions of the Amendment (14th) refer to all the instrumentalities of the States, to its legislative, executive and judicial authorities, and therefore, whoever, by virtue of public position under a State Government, deprives another of any rights protected by that Amendment against deprivation by the State, violates the Constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or, as we have often said, the Constitutional prohibition has no meaning, and the State has clothed one of its agents with power to annul or evade it."

C. B. & O. R. R. v. Chicago, 166 U. S., 226, 233.

These are the words of the Court exercising final authority

over all Federal questions; they fairly ring with power extended to the Central Government. No person who is the custodian of an atom of the State's power should be unmindful of the fact that every time he so uses that power that it deprives any citizen of the United States of life, liberty or property without due process of law, or denies to him the equal protection of the law, he challenges the National Government to assert more and more its power to the exclusion of the power of the State.

The Supreme Court has said:

"The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. The duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the Amendment guarantees, but no more."

United States v. Cruikshank, 92 U. S., 542, 555.

The power in the right of the Federal Government to see that the States do not deny any person the right to due process of law, and to see that they do not deny him the equal protection of the law will be construed to be equal to the task. No one of us dare say that the limit of this power has been reached. No person who genuinely believes in the necessity for the exercise of State Rights in full vigor, will desire to tempt the Central Government to the full awakening of these latent powers. If the States fail to give adequate protection, how shall the Federal Government exercise its power to fulfil the guarantee of the Fourteenth Amendment?

The Amendment itself says that this shall be done by appropriate legislation. Who shall determine what is appropriate legislation? Manifestly Congress in the first instance, finally the Courts.

But if Congress determines that conditions exist which require such legislation, may not the Courts well say that

the question is a political one and that the Courts must yield to legislation?

It may seem that this is sounding an alarm from a great distance; yet, it has been a little while since Texas sent up the cry, "Texas for the Texans," and made the intrastate rates so that the trading centers of the State could trade with the people of the State to the disadvantage of the people out of shipping points out of the State. They felt secure in their power to control intrastate commerce. The result was the Shreveport Case (234 U. S., 342), which extended the powers of the Federal Government more than has been done by any one Act in recent years.

The States went to great lengths in complicating the laws as to the liability of common carriers for loss, injury or damage to goods moving in interstate commerce. There was no real purpose to harmonize on principles. The result is that Congress has taken over the entire subject.

The States lagged in the making of adequate pure food laws. The result is that this is now nearly entirely regulated by the General Government.

The States did not adequately meet the narcotic drug nuisance; the result is that the General Government is now reaching down into the daily lives of the citizens in this respect to a degree which would have been thought impossible a few years ago.

Who will say that it will not in time regulate the entire subject of intoxicating liquors?

These are mentioned to show you that no one can wisely say that, because the Federal Government has not reached into a given subject heretofore, it will not do so now.

No one who feels himself the guardian of State Rights will, for one moment dare arouse the power of the Federal Government to exercise its power to guarantee, by appropriate legislation, that the State will not deprive a citizen of life, liberty or property without due process of law, nor deny him the equal protection of the law.

I have not spoken of those powers that a way may be

pointed out to the Federal Government by which its powers may be extended. No man desires more than I that those powers be not extended over the domestic citizenship of the people; no one realizes more than I that the future prosperity of the Southern part of this Country rests upon the rights of the State to finally and fully deal with this question without interruption. No one desires more than I that it be dealt with wisely and frankly and generously.

But it is intended by what has been said to point out to you, and to those whom I desire to think of as my people, that the rights most deeply cherished, and privileges which are of the very essence of our lives are being endangered by a surrender to passions which are base, and to a wilfulness which exchanges the desire of the moment for the very fundamentals of our domestic life.

Who will deny that even selfish wisdom dictates that justice and moderation should prevail over lawless passion, which in its fury destroys the victim; yet doubly makes victims of its devotees?

What excuse has the State for failing to adequately protect the prisoner under its lock and key, or in its custody?

What reason is there for withholding the enactment of laws which will make the Sheriff and his deputies amenable to a jurisdiction which is composed of persons other than the offenders and their sympathizers?

No one believes that any lyncher will be punished, and experience shows that no real effort will be made to find who the lynchers are.

It can no longer be said that lynching is committed for one crime; it is only a few months ago that two negroes were lynched for killing a mule. Everybody knows that that condition ought not to exist, and yet none raises his hand to its cure. Does not this all but invite the Federal Government to take cognizance of the guarantee?

The legislator has felt that he would antagonize local feeling if he promoted laws which would give the State a real means of redressing and preventing this crime. He would

encounter the argument that the locality should govern itself.

But he should know that by withholding such laws and by denying such protection to the persons who are in the custody of the law he participates in perpetuating a situation which demands remedy and which, if unremedied, invites the interference of the Central Government, and threatens, to a degree which we do not like to contemplate, the rights of the State over matters absolutely essential to our welfare.

The legislator will find that the real enemy of local self-government is he who persists in the maintenance of a system of laws which do not in fact govern, but which offer the shadow for substance.

The man who most imperils the right of the State to govern its own affairs is he who aids it to govern wrongfully.

LYNCHING AND ITS REMEDY.

PAPER BY
S. B. ADAMS,
OF SAVANNAH.

As I have said on a previous occasion, lawlessness is the crime of crimes, the evil of evils. Lawlessness, in its full fruition is anarchy, and anarchy is the culmination of all woes, the last possibility of the powers of darkness.

There is one form of lawlessness in which Georgia has a "bad eminence." I refer to lynching. We may get along in some fashion, notwithstanding the frequent infractions of the penal law, but as long as lynching is common, and is condoned by the public conscience and the public sentiment, we are dangerously near anarchy. Lynching is inherently vicious. It strikes at the foundations of law, government and society; it "puts the law to open shame"; it is defiant of all law and all authority. Lynchers commit a greater crime than their victim, no matter how great his offense.

There is no such thing as "mob law." The expression—"mob law," involves a contradiction of terms. The mob which hangs a man without judge or jury, depriving him of his constitutional rights, is essentially lawless, and in no sense represents the law. Law is a rule of action and procedure, prescribed by lawful authority, and mob action violates every element that enters into all normal conceptions of authority.

The published statistics, accepted generally as reliable, show that last year there were sixty-nine lynchings in the United States. Of these lynchings, fifty-five were negroes and fourteen were white people. This is six more negroes and eleven more whites than were put to death by mobs in 1914. Included in the record are three women. In not

less than four cases, it was demonstrated after the lynching, that the persons put to death were innocent of the offenses charged. Eighteen of the lynchings of 1915, or more than one-fourth of the total number, occurred in the State of Georgia. The bulk of those unlawfully put to death were negroes; I believe, all except one. Only fifteen per cent. of the total number lynched in the United States were charged with the unspeakable crime. A number of the cases involved only charges of misdemeanors, or offenses which at most, would be trifling.

All good citizens deplore our disgraceful record.

The question as to what is the remedy, is not easily answered. It certainly does not lie in the denial, or suppression, or ignoring of the facts. I insist that it is the part not only of honesty, but of wisdom, to look the facts squarely in the face, impress upon all people their extreme gravity and the great evil to the State, not only as to its higher interests, but also as to its material and business interests, and a persistent, uncompromising effort to stop the evil.

It does no good for the newspapers to say that we are no worse than the people of other sections. This statement is not correct, so far as this form of lawlessness is concerned, because our record is exceptionally bad, and a Georgian has special reason to feel humiliated. Such talk tends to lessen our conviction of the sin, and a thorough conviction of sin is necessary to the right kind of repentance.

The excuse sometimes made by the newspapers and by newspaper writers to the effect that men are lynched because the law is too technical or too slow, and because miscarriages of justice result, does harm and harm only. I have read editorials and communications not infrequently, which were calculated to suggest to the members of the mob, that they were really very benign and very useful and patriotic citizens when they took the law into their own hands, and were thus, the vindicators of the law's majesty. Such suggestions are not only not warranted by the facts, but are utterly unwholesome and pernicious in their influence. They

cannot be sound, if only because as a rule (in Georgia a rule almost without exception) the people lynched are negroes, and it cannot be said that the members of this race are the beneficiaries of legal technicalities or of the law's delay, or of the miscarriage of justice. If a negro really deserves death, his conviction by the courts can be counted on, and with reasonable celerity. There is more danger of his being the victim of a miscarriage of justice than its beneficiary. It is so rare that a white man is lynched in Georgia that the number constitutes a negligible quantity. If white men improperly acquitted by juries were lynched, wrong and defenseless though such lynching would necessarily be, there might be some suggestion of plausibility in this excuse; but as long as the facts are as they are, I do not see any room for this excuse or for the throwing of this sop to the mob. Without knowing, I venture the statement that the men who form lynching parties are as a rule, the very class of men who, when on jury duty, improperly acquit and are responsible for the miscarriages of justice, which unfortunately do occur in Georgia. If we say that they belong to the class of men who make intelligent and conscientious jurors, then our case becomes more hopeless. If the men to whom we must look for an improvement and a better public sentiment, are themselves law-breakers; then, alas for us! I am sure, therefore, that these lynchers, certainly as a rule, care nothing for the law, or its majesty, or its dignity. They simply indulge a brutal, bloody and cowardly instinct, lynching only when they think they can do so with impunity.

I do not lose sight of the frenzy sometimes brought about by the commission of the "unspeakable crime," and I can understand how good men have been parties to lynchings in such cases, and can nevertheless, believe that they are respectable and worthy of their community, taking them all in all. But such cases are very rare. The statistics show that last year only fifteen per cent of those lynched in the United States were suspected of this crime, and, therefore, this ex-

cuse cannot be made. Lynching is never justifiable, and there is no room now for any other position.

What distresses me about the situation is that lynchers, so far as I can learn, are never punished in Georgia, no matter how brutal, cowardly, and inexcusable their crime. They tell us that the best men in their community are opposed to lynching, and I must believe it; but the question remains, why is not public sentiment sufficiently strong to at least bring about the trial of men who are guilty of this form of murder, and why do men continue to lynch with apparent impunity? Surely public sentiment among the best people is not sufficiently strong and assertive.

Of course the improvement of public sentiment as to this vital matter, is fundamentally necessary. Our case is hopeless unless public sentiment is improved. All good citizens ought by precept and example, to reprobate this evil, and give it no tolerance or excuse. Particularly is this true of lawyers who, in order to be admitted to the bar, had to take a solemn oath to practice their profession according to law, who are officers of the Court in an important sense, and who of all members in the community ought to be law-abiding, and ought to set their faces uncompromisingly against lawlessness, particularly this baleful and disgraceful form of lawlessness. How a lawyer can excuse it is difficult to understand. He is particularly reprehensible and particularly unworthy when he does this. He of all men, ought to appreciate the value of those fundamental rights imbedded in the Constitution of our State and in the Constitution of the United States, which lynchers trample upon and despise. We ought particularly to value these fundamental principles, and the fact that our government and society are based upon them, and that when we lose them, we lose our foundations.

Inheriting, as we have done, the great principles embodied in the *Magna Charta*, the Petition of Right, the *Habeas Corpus* Act and the Bill of Rights, retained and amplified in the State and Federal Constitutions, we do not in our thought or in our speech, magnify these principles as we ought, or

pay proper homage to the heroic men whose deeds of daring and self-sacrifice secured these principles for us and our posterity.

If the right of indictment, of trial by jury, of being confronted with the witnesses against the accused and the privilege and benefits of counsel be ignored in the case of a poor, friendless negro (ignored often by a cowardly mob because it finds in the fact of his being poor and friendless, its expectation of immunity), then these vital safeguards are imperiled as to all citizens, and the most sacred rights of person and property are put in jeopardy.

The Constitution of our State is particularly designed to protect the minority and the weak and friendless. The majority and the powerful do not need this protection. The most obscure and helpless negro in the land, standing upon one of these fundamental rights, ought to be secure against the attack of the whole State. One man standing squarely upon one of these constitutional guarantees ought, in a free country like ours, to be able to defy a multitude, and in this consist the force and splendor of constitutional limitations.

No man ought to be elected Governor of Georgia, who hesitates to come out flatfooted against lynching, whatever the cause, and without evasion or trimming. His statement on this vital matter ought not to be coupled up with any condition or suggestion of condition. It ought to be understood that he will go to lengths to make an example of any officer who permits a prisoner to be taken out of his hands, even although he might have to imperil his life. It is particularly unfortunate to suggest to an officer that he is not called upon to risk his life in defense of a prisoner. It ought not to be a question with an officer as to saving or losing his life. The only question before him is one of duty, and no man ought to be Governor who has not this kind of attitude and spirit toward the lynching evil.

A Governor ought to be given the power to suspend for not less than thirty days, the sheriff of any county where a lynching occurs, and not terminate the suspension then, until

it has been made clearly to appear that the sheriff has done his full duty, and can be in no wise to blame.

Judges of the Superior Court, when lynchers have been guilty of contempt of court, as they have been in some instances in Georgia, not to mention them specifically, ought to use to the full their power to punish for contempt. The necessary thing to do is to make mobs afraid to lynch. The men willing to commit this form of murder, as a rule, are amenable only to appeals to their fear. Usually irresponsible and utterly reckless of consequences, they will do all that they dare do, and their activities will be circumscribed only by their apprehensions of consequences to their precious selves.

Georgia has started out this year with the promise of duplicating, if not exceeding its bad record of last year. It is high time to stop making excuses for the mob; it is high time to stop lynching. As already indicated, great harm has come to Georgia, not only in its standing, dignity and prestige, but also in its material interests. It is not enough to talk against it and discourage it by word of mouth. If a lynching is threatened in Georgia, it is the duty of all good citizens, particularly of lawyers, to go to the aid of the sheriff, form, by volunteering if need be, a part of his *posse*, and see to it that the mob is dealt with firmly and uncompromisingly. If the lynching occurs, then it becomes their duty to see to it that the lynchers are detected and punished. A formal and perfunctory investigation, simply adds to our disgrace. If the good citizens of a community are really anxious to detect the perpetrators of this crime, they can and will do so.

INTERESTING AND HUMOROUS EXPERIENCES AT THE BAR.

PAPER BY
JOEL BRANHAM,
OF ROME.

The Supreme Court, as originally organized, was divided into five judicial districts, and sessions were held twice a year in each of them at Talbotton, Macon, Cassville, Milledgeville, Hawkinsville, Americus, Decatur, Gainesville, and Savannah. The first session was held at Talbotton in January, 1846.

During the year, two hundred and eleven lawyers were admitted to practice in it. The first Court consisted of Joseph Henry Lumpkin, Chief Justice, Hiram Warner, and Eugenius A. Nisbit. The first case decided was on a motion to dismiss a writ of error. The motion was overruled.

Specimens of the wit and humor of Chief Justice Lumpkin, taken from his judicial opinions, is contained in the admirable paper of Mr. Strozier, entitled "Judicial Nosegays," read at the last session of the Association.

Judge Warner detested the injunction act of 1870. On one occasion, Mr. Featherston was in the Supreme Court room in advance of the call of his circuit. Judge Warner was walking up and down the room, just before the Court convened for exercise, as was his custom. He took notice of Mr. Featherston's presence, and said: "Featherston, I see, is here before the call of his circuit. He looks to me like one of these damn little lawyers, with a fast bill of exceptions in his pocket."

C. Rowell, an attorney of Rome, was of small stature. He always had an elaborate brief, and had the sheriff pile up his books in the Supreme Court room.

On one occasion, when the Rome Circuit was up, Judge Warner missed him and said, "Harrison, what has become of that short man with the long brief?"

A case had been carried to the Supreme Court for the third time. Judge Warner said, in disposing of it: "This Court has no power to make suitors satisfied with its judgment, but this Court has the power to make them acquiesce therein, which this Court now proceeds to do in this case."

I do not remember to have heard either of the other two judges jest or tell anecdotes.

If you would like to review a battle of four giants of the bar at that time, two on each side, turn to the case of *Edmondson v. Dyer* in the 2d Georgia Reports. This case involves a definition of the rule in Shelley's case.

Judge O. A. Lochrane was a merry hearted, good natured man. In the fall of 1864, as we were returning from an attempt to hold court in Crawford County, in the midst of war's disasters that then overwhelmed us, he said he intended to go to Congress when the war was over to have his peace measure passed, which he said was a bill providing that every congressman who should thereafter vote for war his vote should be held and taken to be an act of voluntary enlistment as a private in the ranks for the war without the right of substitution.

When I first settled in Macon, Georgia, I became acquainted with Hon. Barnard H. Hill. I spent a year in his office. On one occasion a lawyer in Macon, slightly inebriated, called on Mr. Hill during the session of the Court to draw a paper for him. As Mr. Hill began to write, he looked over his shoulder and saw that he had written the word "Whereas." "Stop, stop, Mr. Hill," he said. "Damn a man who can't write a paper that begins with a Whereas."

One afternoon in 1884, Judge L. E. Bleckley and I were studying separate questions in the State library. We remained there until twilight. When we were through, we were tired. He came and sat down before me and dropping his long arms between his legs, said, "Branham, the next best thing

to religion is fun." On my return to Rome the next day, I found that some of our married ladies had organized a social club called "The Merry Circle," and, as the sole representative of my sex, they had elected me president. I had the name "Merry Circle" made on a card board in a semi-circle and added Judge Bleckley's remark as a motto, all in gold, and had the card enclosed under glass and hung it in the club room. The newspapers got hold of the motto, together with the name of its author, and it circulated in the press all over the country. We met monthly, at night, had elaborate dinners, and merry times. Judge Bleckley, on the invitation of the ladies, delivered our first annual lecture, in May, 1874, in the opera house in Rome, to a cultured and intelligent audience of over eight hundred people.

His subject was "Much and Many, or Many and Much, or Number and Degree." It contained a comment on the character and career of ex-Governor Joseph E. Brown, as a Much and Many and Many and Much man, which pleased everybody, friends and foes alike. It concluded with a remarkable "Dog Chorus." The Judge said he had ridden ten miles to the house of his sweetheart to visit her, but on getting in sight of the house his heart failed him and he had turned back toward home. As he did so, the yard dog began to bark, and soon another dog, and then another followed until all the dogs in the vicinity, curs, bulls, pointers and fice joined in the chorus as he rode off in dejection and despair. His delivery increased in rapidity and volume, as he delivered this remarkable part of his lecture. The audience was convulsed with laughter. It closed the lecture abruptly and left the audience wondering what became of the Judge's sweetheart.

I remember well his definitions of some of the churches, as given in this lecture, for instance:

Baptist—no boat, no bridge, no umbrella.

Judaism—modest, mild, come to stay but not to spread.

Episcopalian—much in their own many—many in their own much, but not much in anybody else's many, or many in anybody else's much.

A paragraph on tolerance of opinion was superb. He said: "You could not make me more miserable than to place me in Company of fifty men just like I am. If I had fifty boys and they were all just exactly alike, I would name them all Tom."

The manuscript of this lecture was burned with Judge Bleckley's house at Clarksville.

Judge Bleckley was a great man, a wonderful man. He possessed that rare quality which distinguishes greatness from mediocrity—an open mind ready to receive and consider the thoughts of others, and a ready disposition and ability to review his own opinions and correct them when erroneous. His aim was to satisfy his own mind. He had no conceit, and never commended himself or his work directly or indirectly. Without intent or design he hid himself from himself in his work, and revealed himself to others by his work. He said, "I cannot understand why any one, even God, should want to be praised."

Chief Justice Thos. J. Simmons, his associate on the Bench, never jested. He also had an open mind, and the same disposition, ability and readiness to correct his own errors. He wrote the opinion in the case of *Radcliffe v. The City of Augusta*, 66th Ga., 469, by which, as I am informed, the City of Augusta lost a property worth \$30,000.00 Yet in the case of the *East Rome Town Company*, 81st Ga., 363, he fully concurred in the reversal of the *Radcliffe* case. It required a manly man to do it. Some time after the decision of the *East Rome Town Company* case, Judge Bleckley said to me, "Judge Simmons is a great lawyer," an opinion in which I fully concur. He was one of the best all around judges I have ever known. His decisions were uniformly sound, and were seldom reversed.

HON. JOHN W. H. UNDERWOOD.

You will find in the 81st volume of Georgia Reports, page 810, an address of mine delivered at the memorial exercises of Judge Underwood, on the 2nd of March, 1889, in the

Supreme Court. This address contains quite a number of humorous anecdotes told to me by the Judge. I refer to them because neither you nor I can afford the time required to repeat them. A few of them, however, are:

"The Supreme Court differs from the circuit judges only in having the last guess at the law."

"A disappointed suitor said: 'There ought not to be any lawyers.' The Judge replied: 'I will give you a certificate that there are not many'."

"A young man declined to marry a girl because he said she had some land, and he was afraid she would want him to work it."

"A bank failed at Rome. He said: 'It does not trouble me. I am assets'."

"Debt and death sound very much alike and there is but very little difference between them."

"A cash fee quickens my apprehension."

Prior to the Civil War, the judges and solicitors were elected by the Legislature. The capitol was at Milledgeville—there were only two hotels, the Milledgeville Hotel and the McCombs House. Both were just across the street from the capitol. All the members of the Legislature stopped at one or the other of these hotels. A young man was a candidate for solicitor-general. He visited each member of the Legislature, in his room,—announced his candidacy, and all of them said, "I will think about it." When he was through with his canvass he found that he had not a single pledge from any member. He took the round again and said to each member: "Yesterday I told you I was a candidate for solicitor-general. You said you would think about it. I come now to tell you I am not a candidate. Damn you, you can think about that!" When the election came on there were three candidates voted for, and the election was blocked. Some member, remembering the canvass of this young gentleman, nominated him and he was elected.

In 1866-7, the judges were elected by a majority of votes by the electors of each judicial circuit. If no candidate re-

ceived a majority, the Governor appointed. The Tallapoosa Circuit then included the Rome Circuit. C. N. Featherston, Sr., of Newnan, and R. D. Harvey, of Rome, were running for judge of the Tallapoosa Circuit. A few days before the election, W. B. Terhune, of Rome, came out as a third candidate. The result was, he took off enough votes from the other two candidates to defeat an election. Mr. Hamilton, Judge Harvey's partner, went to Milledgeville to secure Judge Harvey's appointment, but before he got there Judge Underwood had been appointed and his commission forwarded to him to Rome.

Major Chas. H. Smith was in the Senate in 1866, and he induced Governor Jenkins to promise the appointment to Judge Underwood in case there should be no election. Then he and Judge Underwood combined, and got Terhune out and had no election. I told this anecdote in the Superior Court while Judge Underwood was on the Bench, and he enjoyed it very much. It is a fine illustration of the methods of the average successful politician.

Judge Underwood and William A. Fort, of Rome, Georgia, refugeeed during the war to Southern Georgia. In the spring of 1865, they returned to Rome together in a buggy. On their way back, and as they were approaching old Van Wert, it was growing dark — they were both suffering for a drink. They determined to stop for the night at old man Wilson's house, a farmer acquaintance, provided he had any whiskey. When they reached the house, he was sitting on the veranda with his feet on the banisters reading a newspaper. They hailed him — asked to stop over and also asked if he had any whiskey. He said, "Yes, light and come in." When they got into the veranda, the old man handed Judge Underwood the newspaper and requested him to finish reading the article aloud. The Judge sat down and began to read, while Fort walked up and down the veranda, restlessly, and very thirsty. After Underwood had read for several minutes, Fort looked over his shoulder and seeing there were three columns still to read, whispered in Underwood's ear, "Skip

some, John, for God's sake, skip some!" and John skipped.

This brings to mind Stanton's poetry published in the *Constitution* last week.

WHAT THE COLONEL SAID.

The mint bed only made him yearn
 For juleps, left forlorn:
 "Since now we're dry enough to burn,
 Let Gabriel blow his horn!
 It's getting time for Judgment Day."
 (That's what they heard the Colonel say.)

Then some one placed a glass, green brimmed,
 Before the Colonel there;
 Ice clinked a hint of julep-mint,—
 'Twas julep, and to spare.
 "It's most too soon for Judgment Day."
 (That's what they heard the Colonel say.)

Two citizens of Floyd County were indicted just after the close of the Civil War for stealing a hog, just before the close of the war. The case was tried at the July term of Floyd Superior Court, 1869. I prosecuted and Judge A. R. Wright defended the case. Only one of them, the father of the other, was put on trial. The jury rendered the following verdict:

The State v. A. B. & C. D.—Simple Larceny.

In view of the demoralized condition of the country at the time of the commission of the offense charged in the within bill of indictment, and the great straights to which many of our citizens were reduced for want of adequate sustenance, we the jury find the defendant not guilty.

J. T. Riley, Foreman.

Minutes No. 9, page 519.

Colonel O. H. Dabney, the hardest lawyer to handle at the Rome bar, could not make a literal quotation. On one occasion in the midst of his rapid delivery of a splendid speech, he said: "He who steals my purse, steals trash, but he who robs me of my character"—here his memory failed—"takes that which—which will do him no good and which will damage me considerably."

Major R. T. Fouché, Colonel Dabney's partner, came into the court room on one occasion at Cedartown, while I was

trying a case and said, "Your Honor, I have the oldest case in this court, and I am entitled to be heard." I said, "Yes, and you shall be heard. What is the case?" He mentioned it, and said, "I have a motion to dismiss it." I said then, "I will hear that motion to-night." It was my custom to hear all motions after supper, but counsel on the other side said he would be engaged that night, so I said, "I will hear it now. What is your motion, Major?" He said, "This is an attachment and the ground of attachment is sworn to by Mr. Thompson as attorney at law to the best of his knowledge and belief." I said, "Is that so, Mr. Thompson?" Thompson reluctantly admitted it, and I said, "Take an order, Major, dismissing the attachment." "Yes, I will, I will," said the Major, "and I think the Court has done me wrong not to let me make my speech."

INTERESTING AND HUMOROUS EXPERIENCES AT THE BAR.

ADDRESS BY
A. W. COZART,
OF COLUMBUS.

Mr. President and Gentlemen of the Georgia Bar Association:

When the late Bishop O. P. Fitzgerald was a young man, he was sent as a missionary to California. He went by water around South America. As the ship was sailing up the western coast one afternoon, the heavens grew dark, the lightning flashed and the thunder roared. A lady who was on board, asked an old Irish sailor, "Are we going to have a storm to-night?" He replied, "Faith, and I will tell you in the morning." Were you to ask me now what kind of a speech I intend to deliver on this occasion, I would say to you, "Faith, and I will tell you within a few minutes."

La Rochefoucauld says, "True eloquence consists in saying all that is proper and nothing more." Voltaire has justly and wittily remarked that adjectives are often the chief enemies of the substantives, though they may agree in gender, number and case. I shall eliminate many of my adjectives in order that I may give strength and brevity to what I have to say. The truth of Shakespeare's oft repeated saying, "Brevity is the soul of wit," clearly appears from the following story: Some persons went from Vermont to Kansas where they formed a colony. One of the rules of the colony required that they should have no idle words. Two of them met on the roadside one day, and this was their conversation:

"Mornin', Si."

"Mornin', Josh."

"What'd you give your horse for the bots?"

"Turpentine."

"Mornin'."

"Mornin'."

In a day or two afterwards they met again, and this was the conversation:

"Mornin', Si."

"Mornin', Josh."

"What'd you say you gave your horse for the bots?"

"Turpentine."

"Killed mine."

"Mine, too."

"Mornin'."

"Mornin'."

THE LAW AND KISSING.

A pun, or play on words, is considered by many as the lowest form of humor. I do not concur in this opinion.

Some years ago an old lady consulted an eccentric physician, and, in describing her disease, said: "The trouble Doctor, is that I can neither lay nor set." "Then, Madam," was the reply, "I respectfully suggest the propriety of roosting."

This is the fowlest joke that I ever told.

When I was a young man, I asked a very beautiful young woman, "When are you going to pay me that kiss which you owe me?" And she immediately replied, "Whenever you present your bill."

In the Orient, the custom of kissing is unknown. There are no swearing words or "cuss" words in the Japanese language. A naughty and witty American, who was in Japan, observed the absence of these things and he said that he believed he would rather live in America where they kiss and "cuss."

Under the Blue Laws of Connecticut and New Haven, kissing was prohibited on Sunday; even a mother could not kiss her babe on Sunday without being subject to a penalty.

In the case of *Crocker v. Railway Company*, 36 Wis., 657, a railroad company was held liable to a woman for the tortious conduct of the conductor in kissing her.

In Georgia, it is a misdemeanor, an assault and battery, for a man to kiss a woman, who is not related to him, *against her will*. It is not necessarily unlawful to kiss a woman *against her cheek* or *against her lips*.

VITRIOLIC WIT AND HUMOR.

There is a kind of wit and humor at the bar which may be characterized as vitriolic. It is the kind brought about by the use of derision, sarcasm, or a sneer.

The word "derision" is derived from two Latin words which mean "to laugh at."

The word "sarcasm" is from two Greek words which mean "flesh" and "to tear."

The word "sneer" is from a Danish word which signifies "to snarl or grin (like a dog)." In English it means "to show contempt by turning up the nose, or by a particular facial expression." Derision, sarcasm and sneering are the satanic trinity of forensic oratory. They constitute the 42-centimeter weapons of legal warfare, and should never be used except when other weapons fail to reach the enemy. They may be employed in the following cases:

First. When the right is in great jeopardy.

Second. To defend one who has been grossly insulted or vilified.

Third. To expose or break down a lying witness.

HUMOR, A BARRIER.

Humor is a barrier to success at the bar, and unless it is wisely used it is apt to obscure the controlling questions in the case and becloud the real issues. When a lawyer acquires a reputation as a humorist, jurors are constantly on the lookout for the humor and lose sight of the weightier matters; furthermore, when a lawyer is long on humor, he is usually short on preparation. Nothing will take the place of a thorough knowledge of the law and the facts of a case, if a lawyer would succeed.

In the case of Abraham Lincoln, humor was not a barrier

to success, but it must be remembered that his greatest speech was utterly devoid of both wit and humor. Lincoln was in a class to himself. He was a very precocious lad. You know, it is said, he assisted his father in building the log cabin in which he was born.

I shall now lay down certain rules when wit and humor may be properly and advantageously used at the bar:

First. When a lawyer has a weak or a close case.

Second. When the trial is long and tedious.

Third. When the opposing counsel is suffering, psychologically speaking, from an abnormal form of reflective self-consciousness.

Fourth. When the trial judge is grouchy, or when his condition indicates calomel. I have long been of the opinion that the General Assembly should make an annual appropriation to purchase calomel for the trial judges and that they should be required, by statute, to take it before each term of the courts and after each term of the courts. My idea for requiring the trial judge to take calomel after the court adjourns is this: I think he should take it until he passes—until he passes—on the motions for new trials.

JOINER OF TAYLOR.

While Judge James T. Willis was charging the grand jury of Taylor Superior Court, one Joiner, who was intoxicated, said to the Court, "Judge, you are emphatically right, you are emphatically right." The Judge ordered the Sheriff, Jack Pope, to take Joiner to jail and there incarcerate him. When they arrived at the jail, Joiner said: "I'm not going in there; snakes are in there." "No," said the Sheriff, "there are no snakes in there." "Yes," said Joiner "there are,—you go in there and you will see them." The Sheriff stepped inside the jail and Joiner immediately closed and locked the door, then went back to the court room, and said to the Judge: "Your Honor, when you need the Sheriff, you will find him in jail, and here's the key."

CUSSETA.

Twenty-five years ago the members of the bar did a great deal more drinking while attending the courts than they do now, and especially did they drink heavily in the early days when the courts were held in the small towns. Now, Cusseta is the county seat of Chattahoochee County. It has been defined as "a small town hauled out to the country for repairs." In the year 1890, one of the ablest lawyers that ever practiced at the Columbus bar was attending court at Cusseta. When sober, he was modest and reserved to timidity; when intoxicated, he was conceited and vainglorious to arrogance. While he was at the court, as I have just remarked, he said to me: "My firm is a firm of very able lawyers, having offices in the city of Columbus; my partner has just telegraphed me to come home as business of vast moment requires my immediate attention, and he finished his telegram with these words, 'Come home at once if you have to buy out the whole damned county, but don't pay over a dollar and a half for it'."

I would not have you understand for a moment that I, in any way, mean to speak disparagingly of Cusseta or of Chattahoochee County, for many of the wisest men I have ever known came from this county, and the fact that they did come from this county is an evidence of their wisdom.

Before I began the practice of law, I taught at Cusseta, and this is another reason why I know of the wonderful intellectual powers of the inhabitants thereof. I remember the first day I opened school. I was making out the roll and ascertaining the ages of the pupils. I asked one little girl how old she was, and she said: "Seven years old, seven minutes past ten last Tuesday night." I tell you this that you may know the accuracy of the knowledge of this peculiar people.

WHITE V. HECHT.

In the case of *White v. Hecht*, which was tried in the City Court of Columbus, I represented the plaintiff, and Mr. C. F. McLaughlin was the attorney for the defendant. As Mr. McLaughlin was finishing his argument, he told the jury that I,

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enjoy a funeral like that has never had a mother-in-law and is not worthy of one.

The jury returned a verdict in behalf of my client for a larger sum than I seriously contended for, but when the case was decided by the Court of Appeals, it was reversed because there was not a particle of evidence to authorize the verdict. (See *Hecht v. White*, 13 Ga. App., 790.)

ACTION ON ACCIDENT POLICY.

I am indebted to Justice Alfred Page, of New York, for the following story, which I wish to incorporate in the record:

"A resident of the Bowery took an accident insurance policy and then fell ill of pleurisy. He brought action against the insurance company and lost in the municipal court, which decided that pleurisy was not an accident but a visitation of God. The superior court reversed the finding on the ground that a visitation of God to a resident of the Bowery was an accident."

CONCLUSION.

In conclusion, permit me to say: While gravity is better than levity, yet it is better to smile than to frown, it is better to soar than to grovel; therefore, let us be cheerful without being facetious, earnest without being morose, and zealous without being ambitious; then we shall have "pleasures without regrets," and then we shall "behold the rainbow without the storm."

INTERESTING AND HUMOROUS EXPERIENCES AT THE BAR.

PAPER BY
ROLAND ELLIS,
OF MACON.

After service of the order, yclept request, by the secretarial autocrat of this patient body to discuss my interesting and humorous experiences at the bar, and after noting the published arrangement of these literary obsequies, it occurred to my mind that among the many things that pass my understanding — notably and ever-increasingly, the law — two are conspicuous.

First, I do not understand why my assignments upon your programs of recent sessions, has always resulted in my immurement, and occultation between Hammond and Black, or Black and Hammond. Some time, the one or the other performing in front, and some time behind, but ever as an inconsequential intaglio in this matrix of depression, I am expected to cheer from a nesting place of gloom, and illumine from a Stygian aura of abysmal opacity. That inspiration could spring from the retrospect furnished by the one, or the prospect afforded by the other, transcends the conceit of the most irresponsible optimism. Even negligible contemplation of the twain, as physical scenery, brings tears to the eyes of strong men; while compulsory audience of their joint lucubrations would compel envy of the lethal comfort of the fortunate Prometheus.

Efficient malignity installed Black to-day as the initial sob, and him sent in front armed with the foregoing arsenal of homicidal wit. A casual "once over" of this ingeniously constructed human implement of lingering and excruciating torture, instantly persuades that the late Edgar Wilson Nye was

looking directly at him when he created Ah Sin, and but masked Black's bland cunning in a mythical Mongolian. His fitness to participate in a symposium upon the humor of the law may be traced to the fact that the entire store of his experience has been gathered as an insurance agent, and not as a lawyer; while his penetrating sense of humor is thoroughly attested by our affectionate recognition of those dear old boyhood jests, which we have not heard in recent years. In law, an anthropoidal discomytete; in humor, as funny as a crutch, in charity he should have furnished each martyr who sat it through one of the Etruscan tear-jugs found by the Innocents Abroad.

But though suffering may have fruited into a keen appraisal of what the Lord hath enabled us to survive, even clairvoyance sinks supine before the task of telling what will follow this ill-starred interlude of mine. It is not within the range of finite intelligence to forewarn you of what Hammond will say or do. Over in the Augusta Circuit, this characteristic is termed "his greatness." When he says and does things, for which, elsewhere, he would be shot, an awe-stricken people speak of "his originality." When he so attires himself, that, outside of Richmond County, small boys follow him and traffic halts, they comment on "his eccentricity." They then tell you that, by these signs and tokens, he is known among them as "a genius." This novel deduction, which has insistently robed him with the ermine at home, having fared abroad, is responsible for the selection of this human spasm to relate his experiences at the bar.

A resumé of his experiences generally would require censorship, before submission to a mixed audience. So while verily it is not given to the sons of men to foresee what Hammond will say, and while it is not meet in this presence for the daughters of men to repeat what he has said, yet it may even come to pass that the words of his mouth will be words of genius and of humor. The lines of his face are lines of humor. In fact the lines of humor and genius have struggled so hard in his countenance that its general topography

resembles the environs of Verdun, but one may fairly predict that the conflict for mastery in the historic waste will finally kindle, as he speaks, into the expression of exquisite mirth, that maps the face of a Beloochistan gargoyle, watching a Roosevelt dog-owl, eating nuts and barking for its mate.

The other thing that I cannot understand is how any lawyer ever succeeds in having any humorous experiences while practicing law.

It may be want of some structural endowment, when one fails to detect the humor in appearing before some bovine, dew-lapped incumbent of the bench, who chews a cud, and after one carefully presents the results of hours of study, vaguely inquires in a far-off, detached voice, goat-like in its pathos, "What is the contention about?"

Or to enter convulsions of hilarity when in the midst of the solemn submission of the crux of your most difficult and important case, one of the nervous ones exclaims: "Mr. Sheriff, some one cracked a peanut on the third bench on the left. Keep order!" Or to guffaw like a son-in-law returning from a certain relative's interment, to have one of the judicial boasters that he is rarely reversed, correct the errors of an unerring and competent reporter, until the transcript of a charge resembles a Chinese laundry list or a sheet of German music. Or, to chuckle like a loser at 2 A. M. in the catbird seat as he squeezes an ace-high flush, to have the stenographer of the member of the court of review assigned your cause, hand you the lemon of an unread record, as he headnotes the information that the discretion of the bonehead below "will not be disturbed."

Oh, say, would it not have required a modern Mark Tapley to have smiled, after my recent experience, when having received an attractive appointment as one of counsel for a board of receivers—grateful solace for the lean months now imminent—to have the decree of appointment appealed, and have a bench adorned by friends, because of a doubt about jurisdiction, and out of a lovely spirit of *bon camaraderie*, abolish the board and you, pending a resolution of that doubt?

And wouldn't it make you feel like taking a journey to some far off jurisdiction, and saying to Brother Park, your colleague in catastrophe, as Abraham said to the young men before his departure for Moriah, "Abide ye here with the ass; and I and the lad will go yonder and worship"?

To pile a Pelion of jest upon an Ossa of heartbreaking mirth, if shortly thereafter you found, that one judge, having the learning and the courage to declare unconstitutional, if he so found, the only barrier between you and thirty thousand dollars worth of whiskey, had been rendered powerless to enforce constitutional guarantees (unless he convened a mass meeting of other judges) by a bunch of congressional Sunny Jims, whose aggregated encephala would covet the dimensions of the Swiss navy, and when this rollicking incident in your frolicsome profession had enlivened the present quarter of the present moon, wouldn't you hurry to the funny ward of this convention, that you might share the joke with your brother revellers?

Possibly some of you on the south side of a damage suit from a female plaintiff, who had suffered vast, complicated and subjective disturbances, may burst into rondels of laughter, upon the belated discovery that our admirable system of jury purging has attracted to your box, two jurors with as many wives suffering from as many similar disturbances inflicted by as many other incorporated malefactors. If so, come unto me, that we may vent our glee in unison with the cheerful cadence of the waves.

When days wax drab, and the hills of the east are overhung with gloom and underslung with dolor, diversion may be found in such incidental pastimes of the profession as trying to convince a governor that some lawyer should be appointed to a vacancy in a judgeship. This is funnier than almost anything, unless it is trying to persuade him that some selection should be made from the members of the bar, before the generation in life, when the vacancy occurred, shall have been gathered to the bosom of Blackstone. And this last is funnier than almost anything else, unless it is trying to re-

member the names of the brother barristers who think they were promised the position, and their arabesque observations upon gubernatorial reliability.

If melancholia still persists in claiming the lawyer for her own, he might seek relief in appearing before a judiciary committee of the General Assembly of Georgia to urge the consideration of legislation proposed by the Bar Association—especially on subjects as impossible as judicial procedure may be, of capable grasp by this body of legal neophytes.

Many otherwise sad moments may be freckled with droll reflections, as some woodland pool with sunshine, as one returns checks for increased retainers voluntarily intruded by over-appreciative clients, or receives intelligence from the referee in bankruptcy that others have had the considerate memory to schedule the value of two years of your service among their other excellent liabilities.

But if an active antidote to risible atrophy be demanded, it may be found in the pastime of advising a woman client. No lawyer who has ever married, undertakes this task, without the same expression of hope on his face that has been made fashionable by the transient guests of electric chairs. Like some male Cassandra, who has learned his curse from matrimony, he may capture ribald pleasure, as he gives opinions that will not be respected, and advice that will not be followed.

One opportunity for an increase in the gayety of nations, and the humor of the practice, will eventuate in that fearsome future when women have broken into the profession, and proceed to advise the same sex, that some somnambulist has called meek! By the side of what happens, when the first peremptory instructions are professionally handed out, a Sinn Fein outburst will look like a family reunion. Yet, if enough of their number would study law to learn, and teach a fair percentage of their sisters, the identity of slander with those loving things they say of one another under the guise of gossip, impartial jails would cease to yearn for their fair forms, and our resistance fading before the swish of their

scented sortie on our ranks, we, who rallied to combat, would remain to caress.

Tres jolie, might prove the collaborating presence of that sweet sex, one of which, upon being told that a lawyer in the surf had just been bitten by a shark, sympathetically exclaimed: "The cannibal!"

Then, perhaps, future sessions of this Association may doff the grave and don the livelier air, as *bon mois* burst, and eyes look wisdom to eyes that wink it back again, while Puck, the foe of sombreness, and Cupid, foe of strife, proclaim a joint and radiant reign.

Ah, the humor in a lawyer's life!

One, indeed, may prate of cap and bells who bends beneath a pack; rare visions glimpse of *crepe*, *couleur de rose*; pat a paunch that dines with Barmecide, and chortle with the winds that freeze his hearth; smile as his mistress sickens for his friend; the dust bestrewn by toil, confetti call; but sooth it is that jocund Thalia haunts not inns of court! Nay, rather to the sunless shrine of dour Melpomene, repair the luckless throng, that wear the wig!

The life of the lawyer is of all lives the most human. A philosopher must needs be he, who lives it truly. If I were Raphaello Santi, and would perpetuate with my wondrous brush the great figure, yielded to eternity by the race of men, upon the consecrated canvass would loom no general with sword that reeked with conquest; no priest with lash or largesse, as he threatened or cajoled; no prince of industry, with a world's marts in puissant and compelling grasp; no silk-robed chancellor, making and unmaking the laws and lives of subject peoples. On the grave expanse, no high lights glow—no painted pomp appears. There is the sanded floor of a country court-house; the stolid half-understanding jurors of divers miens; the complaisant justice; the scowling mob that crowds the creaking benches, and packs doors and windows. In the foul-aired pit cowers a shape, once human, unkempt, friendless, desolate. Standing by this creature's side, with hand uplifted rears the spare figure of a man in speech.

His face spells pain—utter, ages old. His thin frame is clad with rusty black that shines with wear. His sallow cheeks start out with twin hectic spots of red. His pale eyes glint like new steel. His lips curl—fearless—defiant. It is the picture of a God-like weakling demanding man's justice for God's poorest creature. It is a picture of courage. It is a scene of true greatness. It is a Georgia lawyer, himself without friends abroad, and food at home, defending his brother miserable.

Laughter or tears! *Cui bono?*

INTERESTING AND HUMOROUS EXPERIENCES AT THE BAR.

ADDRESS BY
HENRY C. HAMMOND,
OF AUGUSTA.

(Stenographically Reported.)

I am utterly miserable, my friends, and in a few minutes you will be. If there are any who want to go out, for the Lord's sake go; I am not going to try to stop you. (To the reporter:) Please do not write down anything that I say. If it were not for you stenographers, I would be the greatest judge in Georgia to-day. It is you fellows that are getting me into trouble all the time with the Supreme Court. (Laughter.)

My friends, I have attended many Bar Association meetings, but this is one of the most delightful I have ever attended in my life. I have never heard such a high-class lot of speeches as I have listened to here in all my life before. The splendid paper read by the President, the convincing oration of my friend, Rosser, the splendid speech made by Mr. Alston, and the great oration of the day made by our distinguished visitor, carrying us back into the realm of dim and distant precedent in jurisprudence, were all magnificent; but I did not really think that I would ever live to hear my praises sung as they were by my dear friend, Ellis. I know why he did it, though. A lawyer never does anything for another gratuitously, and I know why he did it. He took me to one side, and said: "Look here, Hammond, I understand you have heard something about me. Let me show you what I am going to say about you this afternoon. I will let you read this thing, and, if you will agree not to tell what you know about me in a certain matter, I will agree not to read this." I said, "I will not do it." Now, I want you to understand, my

friends, that I am not an original prohibitionist; but I regret to say that there are many contrivances by which the prohibition law is said to be defeated. They tell me in the City of Savannah—and I know it's true in Augusta—the whole foundations of the city have been undermined with excavations for storing liquor in barrels and bottles, and houses are caving in. But Mr. Ellis said he did not need anything of that sort, since he had a little still all his own, and by the use of a gas-jet he could make enough liquor to get a whole family drunk for a week. I give you that for the benefit of the Macon contingent, who might want to follow Mr. Ellis up. (Laughter.)

Understand, my friends, I am no humorist. You will know it for certain in a moment. I am a reformer, and the idea that my suggestions of reform should have been taken in this light and flippant way by the Association is a matter of great concern to me. (Laughter.) I have urged, and I still urge, such reforms (they seem a little radical, I admit) as the abolition of the Supreme Court and the Court of Appeals. (Laughter.) I am willing to go on down the line, and I think that all the Superior Court judges now on the bench ought to be retired at double their present pay, and that incoming judges ought to be required to work eight hours a week, and no more.

My friends, I have always regarded our distinguished Secretary, Mr. Park, as a gentle, kindly, friendly man, sweet and amiable always; but you know Mr. Park has recently written a book. It reminds me somewhat of a book written by a young lady which was so naughty that her mother forbade her to read it. I do not know whether Mrs. Park has forbidden Mr. Park to read his book or not, but it is a highly interesting, though somewhat disconnected, treatise on the law of Georgia. It will never be read by anybody, I fear, but nevertheless it is a weighty work. I think it costs about fifty-eight pounds—no, I mean weighs about fifty-eight pounds—oh, it is a monumental work. It is about as high as a monument, and about as broad, too. Of course, as I say, nobody would ever read this book, but we all have to buy it, and pay

for it. There have been other great Code writers, but, my friends, unquestionably, they have all been tyrants of the worst kind. Justinian and Napoleon were two of the greatest tyrants the world has ever known.

The suggestion was made, when I was asked to make this talk, that I see if I could not make an idiot of myself deliberately. I have done so only accidentally up to this time, but now it is a matter of deliberation with me. However, my friends, I have this serious suggestion to make to the Association. No wonder there was a demand here for something like humor. You talk about doctors, and undertakers, and the like, but we are engaged in the most terrible and distressing business of any men on earth. In the midst of wreck and ruin the lawyer is called upon like the wreckers who go out yonder to sea (and some say the wreckers generally get the wreck) (laughter), but, gentlemen, we are engaged in the most terrible, the most gruesome business. Nothing ever comes our way unless everything has gone wrong. We do need humor; we do need levity; and I do not think that any man at the Bar Association meeting ought to admit that he is a lawyer, or that he is a judge. Some of them do not have to admit it, of course, for they just know they are not (laughter), but for the Lord's sake, if there is any humor in our business, let us let it come to the surface, and forget the great and gloomy things which infest our daily life at the bar. Now, there are some humorous things which happen in the court room—things we laugh at—but it is only on account of the surroundings, only because everything is so terribly dull in the environment that we laugh at those things.

I know a man up in McDuffie County, and I would advise the members of the bar to follow his example. He has a continual smile on his face, laughs all the time, and wins more cases than anybody you ever saw, because he does not sail into everybody, fighting everybody and everything in sight. That fellow could teach Job a lesson in patience—and it pays. We have a great solicitor-general in Augusta. Oh, he is a big man, a great big man; he is big up and big all around;

he measures about seventy-two inches around; and he uses more wit and humor, and wins more cases, than any man I ever saw.

I tell you, my friends, there is one thing I want to call your attention to and that is the utter lack of conception on the part of the ordinary man of what justice is. His mind cannot take it in; he cannot conceive of what justice is. That he should lay aside all matters of friendship and generosity and kindness and do justice is something he cannot master. And, when we expect a jury to do that, we expect them to do an impossible thing. We expect the juror to carry a burden which he cannot sustain. That reminds me of what an old friend of mine told me the other day. Said he: "Judge, I never would go on the grand jury, if it was not to serve my friends." (Laughter.) The other day we were holding court up in Columbia County. A lot of negroes up there got into a fight, and finally one of them was indicted for trying to murder another one. I could not help thinking in that case of the awful ignorance of juries. They are brought into the court room where everything is new to them, where they are unacquainted with the terms used—they have no conception of them, and they are turned loose to pass on these matters. You all know the story of the jury that went out and after a long time returned, when the judge said to them, "Have you agreed on a verdict, gentlemen of the jury?" They said, "Yes, your honor, we know what we want to decide, but we do not know how to write the verdict." "What is the trouble?" asked the court. "We want to know, your honor, who is the plaintiff and who defendant." They do not even understand those terms that we are all so much accustomed to. They have no idea about things. And the same thing is true of many other terms, and I feel so sorry for a poor jury, when they go out to decide a case. The door closes on them, and a knotty question is handed over to them to decide, and no help from any source can come in to them. Oh! I feel awful sorry for them. I sympathized very much with a certain jury that went out and stayed two days. They were called back,

and the judge inquired, "how do you stand?" "What do you mean by how we stand"? they asked. Said the judge, "how many are for the plaintiff, and how many for the defendant?" "Hell," they replied, "we've been all this time balloting for a foreman." (Laughter.)

We have a sheriff in Columbia County—you will all be astonished that I should give any sanction to such a practice, but really it has grown up there, and it is not without its good points—this sheriff, whenever he is sent into the jury room to ask that old question: "The judge has asked if you have agreed upon a verdict or are likely to agree," goes in and stays ten or fifteen minutes, and when he comes out, he is loaded with information. He can tell how the jury stands, and what the trouble is, and he can make various little suggestions; and it helps as a guide to those poor fellows in their blundering around. (Laughter.)

The other day I tried in Burke County one of these miserable land cases, an ejectment suit. Nobody knew anything about the case; the lawyers on the two sides of it of course knew nothing about the case; they were just trying to win it, that was all. (Laughter.) And I had absolutely no knowledge of the case. A fellow came up and asked me how I was going to charge the jury. I said, "I am not going to charge them; I am going to grant a nonsuit for the defendant, or direct a verdict for the plaintiff." (Laughter.) Finally I was persuaded to charge them, and of course the Supreme Court, as they do in all these land cases for the first two or three trials, reversed the case, and I do not know where it is now. That case was given to the jury, an unusually intelligent jury, too, and it was a magnificent charge that I gave them. (Laughter.) They could not arrive at a verdict promptly, and finally they came back into the court, and the foreman asked some question, which I endeavored to explain. Then I saw a little fellow on the jury go up and whisper something in the bailiff's ear. I told him to speak out, and, that if the foreman did not ask a question that he wanted asked to ask it himself. He said, "Well, judge, which one of them

do you think ought to win?" (Laughter.) It was pitiful—I really did not know myself. (Laughter.)

Now, there is another matter I want to talk to you about,—you know it is very hard for a reformer to get away from his reforms. It is very hard for me to forget what I am so anxious to do—a thing which I have urged before this Bar Association on other occasions. The thing to which I refer is the terrible penal system of Georgia—our awfully benighted penal system, which is so far behind that of every State in the Union. It is such a pity that our system is what it is. I listened attentively to Mr. Rosser's able paper as to how many are convicted and how many let loose; but the trouble does not begin there. It is altogether the terrible, vindictive, revengeful attitude of the State to its convict, when he is convicted. One found guilty of a crime is a convict, but after all he is a citizen of the State, a child of the State, and as much a claimant upon its care and protection as any man here before me or anywhere else. I will not dwell upon this subject, but it frequently comes into my mind, and I wanted to say this much about it.

And in this connection I think of a practice which is common in Georgia, about which I want to say a few words. While this is supposed to be a humorous address, I want to say something of what I think of a judge who sits securely upon his bench on high and in addition to the awful sentence which he imposes, perhaps of death, abuses and vilifies and denounces the poor trembling wretch before him. This is a thing which, as I say, has become a practice. Under the old English practice the judge in passing sentence abused the prisoner, just as many judges in Georgia do to-day. But under the English practice the prisoner had the right of answering the judge and abusing him; and the prisoner was frequently taken out shackled, shaking his fist, and denouncing the judge and the whole system of jurisprudence. I wish that practice would come back in Georgia. It would stop some of the judges from this cowardly denunciation of prisoners before them. So help me God, I never will do it again; I never will

say an unkind or an unchristian word to a man convicted, so long as I live. I have not done it for eight or ten years, and I never will do it again. (Applause.)

I had an experience of this kind, some time ago. There was a negro named Flournoy, who killed a white man down in Burke County. It was a terrible crime, of course, but he was a good negro—what we call a “white man’s negro”—and a number of the best citizens of the county testified as to his general good character. He was convicted, since the evidence was overwhelming, and he was to be sentenced to death. I felt very sorry about it. I said to him: “Flournoy, we are mighty sorry that we will have to hang you, old fellow; it is a mighty bad thing, and I hate it, but I want you to prove that you are a good fellow. I want you to show the good character that all these gentlemen have come here and given you. We will have to keep you in jail for twenty days before you will hang, but everybody who wants to can come to see you—your wife, and your preacher, or any one else. And you must be a man now; stand right up, and be a man; read your Bible, and fix for this thing.” I do not pretend to say that that was all I said to him, but I made him a little talk of that sort. There was no formal denunciatory speech about “hanging you by the neck till you are dead, dead, dead,” as I have heard some judges deliver, as if they gloried in the power of the bench over the poor human wretch who has been legally convicted. I did not abuse and denounce him, and thus add to his misery. When I got through talking to him, he said, “Jedge, you shore treated me mighty nice, and I’ll never fergit yer the longest day I lives on earth.” The poor devil, I was sorry for him that he had only twenty days to live! Cut out that abuse; it is uncalled for and unchristian. God knows the sentence is bad enough without the judge adding his mite to the poor wretch’s misery. (Applause.)

I was trying a case in Columbia County. A prisoner was being tried for selling liquor, and his lawyer made a passionate appeal for leniency. It developed in the eloquent appeal to the court for leniency that this fellow had nine

children, and the last one had been named "Henry Hammond." (Laughter.) I think that little fellow appeared on the scene about the time the grand jury indicted the prisoner, and he was doing the best he could to make terms with the court. (Laughter.) I was sorry for this poor man. I told him it must be a great blessing to have a great number of children like that, and I told him also that I would like to have one of his children, and asked him if he would give me the little fellow whom he had been kind enough to name for me. He said, "I thank you, jedge, but I would not like to split 'em up." (Laughter.) I did not want to be grasping about it, but I told him I would be delighted to have all nine of them. He said, "Jedge, will yer take all nine?" "Yes," said I. "Well, jedge," said he, "they are yourn." (Laughter.) And let me tell you, I would have them to-day—God bless 'em—but his wife backed out and would not let me have them.

Of course we do not have to have anything maudlin about it. We have got to impose some kind of restraint upon people, and I do not want to appear to you to-day in the attitude of a "mollycoddle" by any means; but I have heard so much in Georgia—I have heard it expressed here on this floor—about taking away the pardoning power. My friends, that is a Godlike power. (Applause.) Let us not take it away. I do not care how you safeguard it and protect it. But, when a Legislature of Georgia shall pass a law taking away the pardoning power, it will be an evil day for Georgia; for believe me when I tell you that the greatest words that ever fell from the Master's lips were those of forgiveness and hope to the thief who hung upon the cross. (Applause.) I say, my friends, that the administration of the law is an earnest, serious business; the enemies of society must be restrained; they must be punished; but we can and we should temper justice with mercy, and we ought not to take away the pardoning power.

Just one other little matter I want to lead up to. I am a little mixed up on my manuscript. (Laughter.) You know

Solomon said, "Vanity, vanity, all is vanity." I want to call your attention to the vanity which is displayed by judges and lawyers in Georgia, and particularly that displayed by judges in charging grand juries. Of all the fifth wheels in our system of jurisprudence I think the grand jury takes the prize. It ought to be done away with. It has no place in our system at all. The solicitor and judge are enough, and we do not need any grand jury. We are not going to accuse anybody of crime idly and willfully and viciously. I have never known a grand jury to do anything affirmative except refuse to indict some man who is guilty and ought to be punished. But it is the opportunity of the judge in charging the grand jury to talk about everything from apple-growing to the protective tariff, and thus waste two and a half hours of perfectly good time and the county's perfectly good money, in gratifying his vanity. That is about all the opportunity he has to let the public know how he stands on all the current topics of the day, and that is about all the grand jury is needed for.

You know some young lawyers think if they can speak loud enough and long enough to a jury that that is all there is to be done. I have in my experience of forty or fifty years at the bar (laughter) never heard or seen any man but one who by pure eloquence—eloquence divorced from any knowledge of the particular case or the law or anything else—could win a case. I have seen that man come into a case, when it was half tried, and win it by pure eloquence and that alone. But he is the only man I have ever seen who just by eloquence and nothing else could win a case in a court of law. The gentleman sits before me (referring to Judge Twiggs). I have seen him take the sun and follow him in his majestic course across the heavens; I have seen him leap from star to star and do all sorts of stunts. (Laughter.) I do not know why these things stick in our minds, but I remember about sixty years ago (laughter), the Judge defended a negro for stealing \$117 from an old woman in Augusta. This old woman, I remember, had her money in a stocking, and she put it first behind the wall; then she put it between the mattresses; then she put

it in a pillow-case; and later she hid it in a dresser drawer. The Judge hit upon this feature of the evidence, that she put the money at first in one place and then in another. There was no particular point in it, but it furnished the basis for the Judge's oratory—that pure oratory, nothing but oratory—something I think of as almost isolated from anything else—just pure oratory, absolutely pure and unadulterated oratory. I will try to imitate the Judge in addressing the jury about this money. Said he: "Gentlemen of the jury, this old woman would have you believe that the house was filled with money; that the pillow-slips were full of money; that the mattresses were stuffed with money; that the dresser drawers were bulged with money; that she was lousy with money; that the place was alive with money; that there was money upstairs and money downstairs, money here, and money there, and money everywhere—Great God! (Laughter.) That was enough to win the case. I do not know whether the jury laughed or cried or were scared to death, but they fell for it, and turned the prisoner loose. Juries are more amenable to sound than to sense. (Laughter.)"

We have a lawyer in Augusta who is a remarkable lawyer in many respects, but he is particularly distinguished by reason of the fact that he comes from Harrisburg. This lawyer, as I explained to Judge Lambdin, when he was up there, does not care anything about the jury or the judge, but he wants to talk to Harrisburg. The court-house is three miles from Harrisburg, and he talks back to Harrisburg invariably. We have another lawyer in Augusta about as high as that (three feet). His legs are very short, but his feet touch the ground. (Laughter.) He is emphasis and eloquence all over, and I had to put up a barrier in front of the jury box to keep him from getting over the railing into the jury box. As it is, he reaches over and slaps every juror on the leg during the course of his tame remarks. I had one lawyer once to get over into the jury box and sit down. There is no shame in some lawyers about anything in the world.

But I seem to be kind of circling around. I guess I had

better stick to my manuscript. (Laughter.) There is just one other matter—and I am mighty glad to talk this evening. The more I talk the more I feel relieved. Where is Judge Cozart? I did not have any idea that he was a Presbyterian. He talked like a Methodist, but when he suggested that all the judges ought to take calomel I knew that that fellow was a Presbyterian. There is no better set of people living in the world, but they believe in hell, hanging, and calomel. (Laughter.)

Now, getting to that other matter—the funniest thing that I know of in the whole matter of a judgeship is being elected judge. I will tell you how I came to be judge. You are all wondering, I know. Everybody wonders. I went to see an aged relative of mine in North Carolina. My clothes were somewhat bespattered by mud. There was an old maiden lady up there who was asking about different members of the family, and turning to me, she said, "I suppose you are a farmer." I said, "No, ma'am, I am not." "What are you?" she said. "I am a judge, I replied. "*You* a judge?" she asked. She had never seen one except the kind with a high hat and a coat like that coat Judge Cozart is wearing on this occasion.

But never mind that—I started out to tell you how I came to be judge. When I was appointed judge, the office paid the princely salary of \$2,000.00 a year, and after everybody in town had been asked to take it and had refused it, the office was put off on me. (Laughter.) After the salary was raised to \$5,000.00, it looked a little better to some of them, and I was opposed for the judgeship. (Laughter.) Now, my friends, I know more about electing a judge in Georgia than any man in the world. Does anybody want to be a judge? If so, you come and see me, and I can give you the dope. I do not care anything about your qualifications. Just so you are a lawyer, and thirty years old, I can get you elected in any circuit in Georgia, because I know how. Do not let any lawyers support you. Do not let any lawyers come about you. Just follow out my directions. I have gone the whole way, and I'll show it to you. It is the most delightful business you

ever engaged in. I can tell you the food you ought to eat. The hardest thing that I had to live down was that it was said that I was an atheist and an infidel, and that I was too drunk to go on the bench, and that I was a dead game sport with the boys, and that I played cards. Those were some of the things urged against me. I can also give you instructions as to the kind of clothes you ought to wear. Electing a judge is like this: there is a general invitation to the public to come up and kick the judge. So you want to get a pair of trousers like these football players wear. I was campaigning in Columbia County, and I walked through a brier-patch, and then climbed a ten-rail fence in the summer time; and I want to tell you one thing—it will not do to wear low-quartered shoes, and campaign. Never wear low-quartered shoes when you go to campaign as a judge.

We have a great way of saying we will not have elections of judges by the people; but this is a democratic country, and you must come to know—and more and more you are going to see it so—that we have got to educate and cultivate the people up to a sense of knowing how to make a selection of a man for judge. Do not think we are going to switch it back to the Legislature or to the appointment plan, because we are living in a democracy and more and more things are going back to the people. And, as I said, if any of the members of this Association are going to run for judge, they should come and see me, for I can give them the dope. (Laughter.)

I thank you very much for your kindness in listening to me. I want to say to you this thing which has been on my mind. I have been thinking how delightful, how charming, how splendid it is to come here and meet with this gathering and hear these splendid addresses; but how much better it would be if the things which we have heard here could go out to all the lawyers in Georgia. What would it mean to them if they could hear and enjoy the splendid addresses which have been delivered here? Is there, I ask myself, no chance of reaching the great mass of Georgia lawyers with the influence of the Georgia Bar Association? (Applause.)

INTERESTING AND HUMOROUS EXPERIENCES AT THE BAR.

ADDRESS BY
W. IRWIN MACINTYRE,
OF THOMASVILLE.

(Stenographically Reported.)

Mr. Chairman, Ladies and Gentlemen:

Under the best of circumstances an orator is never much appreciated by a house full of other orators. I have been astonished to know how late it was, and how all of my predecessors have held this audience thus far.

I was surprised when I was asked to join in this symposium. I did not know how the Committee ever knew about me at all. In fact I felt like I did some years ago, when I was experimenting in farming. I had a herd of Angora goats; I considered farming an avocation, a side line. I was returning to Thomasville one night from a neighboring city, when a gentleman seated by me in the sleeper asked me what might my name be. I told him. He said that he had heard of me. My chest expanded with pardonable pride, and then he added: "And how are your goats getting along?" I soon found that he had never heard anything else about me.

I have been requested to tell of a few humorous incidents that I have observed at the bar. I shall only tell a few on account of the time we have been already delayed.

I once represented a defendant who was confined in jail. He had a brother, who for a long time had been at outs with him. In fact they had not spoken to each other for several years. When this poor boy got into trouble, however, his more fortunate brother decided to drop down to see him. He told the jailer whom he wanted to see, and that he was his brother. The jailer went to the cell and told the man of

his call, and he replied: "Well, you just go back and tell my brother that I ain't in." (Laughter.)

I was representing a colored steward, in the A. M. E. Church who had beaten and battered up a brother steward to the queen's taste. The victim got on the stand to tell what had been done to him, and he stated this in substance: "Me and Brother Lee Simms is both stewards in the church, and there had got to be some mighty bad reports out about Brother Lee and some of the sisters. I thinks to myself it's my duty to tell him about these terrible reports. So I went to his home to tell him about these things for his own good, but he wasn't there. So I left word with Sister Simms, and the next day he beat me up like this. (Laughter.)

I am going to make my remarks even shorter than I intended on account of the difficulty that I have in reading my manuscript. I will tell you just this and this is the last experience of this sort that I will narrate. I do not know whether it is so funny, but it is so unusual and illustrative of what is possible to happen, that I am going to tell it to this audience.

Some years ago a defendant was indicted in a neighboring State for murder. It was one of those States which permit interrogatories and depositions in evidence in criminal cases, unlike our State in that respect. I was appointed commissioner to take certain evidence in Thomas County by interrogatories. Papers were sent me by the attorney for the defendant, and he told me to find the witness, no matter where he was, if he was in the county, because he was the only eyewitness to the tragedy, and to get him right away for he might leave again. I found he was fourteen or fifteen miles in the country. I got a horse and buggy and invited a young lady to go with me, and we went out to find him. I found that he was at work in a field. I told him that I had gotten a letter from Colonel Brown, and he knew the attorney and evidently knew the defendant. He promised me to come into town on an appointed day, and as I drove off, being afraid that he might not come in, and leave his crop, I turned to him and said: "Jeff, I expect to pay you for your trouble;

now be sure and come in." He came in and put up about the best case for the defendant you ever heard, and charged fifteen dollars for his trouble, which I thought too much, but which was promptly paid by the defendant's attorney. The interrogatories were forwarded, and the defendant promptly acquitted. I thought no more about the case. A year or two ago, which was about six or seven years after the occurrence, and I had not seen Jeff since, he came up to me, more or less loaded up on Jamaica ginger, and drew me to one side and said: "Has you ever told anybody?" I said: "About what?" He said: "I ain't never told anybody, but I'se jest as guilty as you is." I asked: "Why, what do you mean, Jeff?" He said: "Oh! Boss, when a man winks at me, and says that he will pay me for my trouble, he don't have to knock me down with no sticks for me to know what he means. I ain't no dam fool, if I do drink Jamaica ginger. Us shore got him out, didn't us?" (Laughter.)

As there is nobody leaving, I shall tell another one. I observed an amusing incident not long since in a Federal court. There was present a lawyer from a small town, who had a lot of foreigners, who wanted to get "acclimatized." He put them up and asked two or three formal questions, and then the trial judge asked one or two, and the order was taken in each instance. Finally he put up one, and for some reason or other the trial judge asked this question: "Where in this country does United States authority leave off and State authority begin?" This poor dago made an awful mess of answering it, about as much of a mess as the ordinary law student would. When the applicant got through, the lawyer said to the court: "Your Honor, you have heard the questions and answers; we think that he is entitled to citizenship." The judge said: "Very well, but do you think that he thoroughly understood the distinction between State and Federal authority?" "Well, Your Honor, I am sure that he does, but the applicant was excited and he could not tell it." "Well," said the judge, "if you think that he knows, I would be glad for you to call him back, and let him tell it, for that is a matter

that has puzzled the court for about forty years." (Laughter.) The lawyer with much embarrassment took his seat, and of course the foreigner was given citizenship.

A young associate of mine was recently suing a railroad for a "Fine, registered, pedigreed, thoroughbred Duroc Jersey sow." A distinguished member of this Association was representing the railroad, and had succeeded in bringing out that the sow sometimes ate chickens.

He had been making much of this point, and would refer to the subject matter of the suit, as: "That old red chicken-eating sow." Every time such language was used, my young friend representing the plaintiff would flinch like he was stuck with a knife.

Finally the champion of the deceased sow arose to address the jury, and began in these words: "Gentlemen of the Jury, don't you pay any attention to what my distinguished opponent says about 'An old chicken-eating sow, an old chicken-eating sow!' Why! gentlemen of the jury, the moral character of that sow hasn't got a God's thing to do with this case." (Laughter.)

In spite of my promise to the contrary, ladies and gentlemen, I have kept you over the intended time. I thank you for your indulgence and your attention. (Applause.)

THE RELIEF OF GEORGIA APPELLATE COURTS.

PAPER BY
ALEXANDER C. KING,
OF ATLANTA.

The subject of this paper is not one of the writer's choosing.

Your Executive Committee has requested that I contribute some suggestions to the discussion, if any relief from the great burden of cases now pressing on the Supreme Court and Court of Appeals of Georgia can be obtained, especially by changing the rules of those courts governing the practice on appeal.

This request from the executive authority of the Association, like an invitation from royalty, is a command: and must be my warrant for what would otherwise be presumption.

To determine whether any relief can be had through the exercise by the Appellate Courts of their power to make rules it is necessary to consider the conditions existing, the inherent rights of litigants, the relief needed, and the powers of the courts to deal with the subject.

It is well to consider briefly the history of our Appellate Courts.

To consider whence we have come — how far and in what direction, we have traveled, and what stage we have reached, may aid in determining where we will go, if we do not change, and what changes are needed.

The State of Georgia has existed as an independent Commonwealth since 1776, practically one hundred and forty years. During that entire time she has had a judiciary, and numbered among her judges, her most distinguished sons.

Yet it was not until the year 1846 that the Supreme Court of Georgia opened its first session and the right of appeal to a court of review was given effect. Its first decisions were

rendered at the March term, 1846, held at Cassville in Cass, now Bartow County. The place and county have disappeared from history.

The existence of the Supreme Court of Georgia is confined, therefore, to the last seventy years. The right to a writ of error has existed in Georgia only during that time.

It does not seem to have occurred to the earlier jurisprudence of the State that an appeal to a court of last resort was an essential right of the litigants in any case,—even those of great importance,—and that the time would come when acquiescence in the decision of the court below would be the exception and not the rule.

We have apparently entirely forgotten that a writ of error, or an appeal, is not a matter of right.

Yet such is the case. That the remedy by a writ of error or appeal, is taken away, or does not exist, is no denial of due process of law. It is, when allowed, a privilege and not a right.

In Georgia we have traveled a long way from the years before 1846.

We have opened wide the door for appeals and writs of error, and no case is deemed too small to be kept from the court of last resort.

Indeed the smaller the case the greater its rights to be reviewed.

A case in the superior or city courts is entitled to but one proceeding for the correction of errors; but a case in a justice's court involving only a few dollars is entitled to three:

First. To an appeal to a jury from the decision of the justice;

Second: To a writ of *certiorari* to the Superior Court;

Third. To a writ of error to the Court of Appeals.

It would seem to be giving full rights of review to consider the superior court as the court of appeal from a justice's court and let the case end there.

The growth of business in the Supreme Court which caused the increase of the bench from three to six judges in

the fall of 1895 and the creating of the Court of Appeals in 1907, need not be recited. It may be profitable to review some statistics as to the volume of business then and since, and the present condition of each of these courts, in suggesting the necessary remedies for the present situation.

The report of the "Commission on Judicial Procedure," appointed by the General Assembly in 1913, presented to the Legislature on July 6th, 1914, contained a complete statement of the cases brought before the Supreme Court and Court of Appeals from the organization of the last court to the date of that report. The figures bringing the record up to a recent date have been kindly furnished by the clerk's offices of these courts.

The highest number of cases returned in one year to the Supreme Court, prior to the institution of the Court of Appeals, was 1,156.

The returns to the Supreme Court and Court of Appeals from and including October term, 1910, to the recent date mentioned is about 1,500 cases per annum. The returns for the last two preceding years average 1,686; showing the increasing tendency.

Of these cases an average of 730 per annum for the last six years has gone to the Supreme Court and 788 to the Court of Appeals. During the last two years the average has been 816 per annum to the Supreme Court and 871 to the Court of Appeals.

Roughly speaking, about nine-tenths of the business in the Supreme Court is civil, and one-tenth criminal, and in the Court of Appeals, six-tenths civil and four-tenths criminal.

These figures are approximate only.

The Supreme Court had decided in the last two years 1,162 cases and had on hand, undecided (including those not argued), 696 cases.

The Court of Appeals had decided during these two years 1,365 cases, and had on hand, undecided (including those not argued), 476 cases.

The Supreme Court at the last term, and again at this term,

has been compelled to order nearly all cases argued by brief under the Act of 1879. (Code of 1910, Secs. 6198-6201.)

These are the conditions that confront the State, the courts and the bar.

The first thing that strikes the investigator, from the number of cases carried to our Appellate Courts, is that the privilege of the writ of error is being abused, and that the ability to take an appeal in any case, as a matter of right, ought to be restricted.

This indication is strengthened by the high percentage of affirmances.

It is to be hoped that the Legislature will return to the sound position that an appeal is not a matter of right in every case; but is really a matter of grace, subject to such restrictions and conditions as may be prescribed. While appeals are needful, they should only be allowed under conditions which will discourage their abuse.

Our sister State of Alabama offers an example of how this can be done. If a money judgment rendered is taken to the Appellate Courts and affirmed, it is increased ten per cent. regardless of whether the appeal was for delay *or not*. It is the price paid for the *privilege* of an appeal where the court of last resort holds the appeal was not well taken. It might be well extended so as to tax double or triple costs against an unsuccessful appellant, who had not recovered a money judgment in the court below.

It is evident that restrictions on the privilege of appeal—such procedure as will winnow the cases into those requiring careful consideration, from those plainly without merit,—and the taxing of sufficient penalties to prevent frivolous appeals, are necessary remedies.

With these remedies, however, I shall not deal. I leave them as suggestions. I desire, however, to urge the following:

First. The return of writs of error should not be to terms. There is no intelligent reason why a case appealed should not be ripe for a hearing so many days after the record can be sent to the Appellate Court. This is the rule in the Court of

Appeals of Georgia, also in the Supreme Court and Courts of Appeals of the United States. While the present state of business may prevent this change from advancing such hearing, still the case would be ripe, and in the control of the court for hearing, or other action, out of its order, if an emergency so required.

Second. Cases which have had a review either by *certiorari* or appeal to the Superior Court, from justice courts should not be given a writ of error as of right, but only on certificate of the Superior Court judge that in his opinion, the questions in the case were sufficiently important, or close, to warrant such hearing.

In the State of Virginia no appeal is allowed to the Supreme Court in any case except on the order of a Justice of the Supreme Court.

A petition giving the appellant's statement of the case and his reasons why the judgment complained of is erroneous is presented without oral argument to the chief justice. He examines the application. If on the case, as thus presented, he thinks the questions merit examination by the Supreme Court, he allows the appeal and the record is sent up. If he thinks there is no merit in the application he denies the petition. This petition may be presented in turn to the other justices, and, if any of them allow the appeal, the record is sent up and the case is heard. If none of them allow the appeal the decision below ends the case.

The court exercises great care in the grant of appeals, and many cases are thus disposed of on the examination, without argument, of appellant's statement of his own case.

The writer was of counsel in a case involving the constitutionality of a statute levying certain taxes. The case was one of first impression in Virginia. The court below held the statute unconstitutional, and the Supreme Court justices denied an appeal on appellant's own petition.

The present appellate practice in Georgia is calculated to give the court little protection against appeals, without merit, and little assistance in handling the cases.

Any case can be taken up on an affidavit of inability from poverty to give bond or pay costs. No facts need be stated in the affidavit, only the affiant's conclusions. No machinery for contesting the truth of these conclusions is provided, either in the lower or Appellate Court.

The case may be submitted as matter of right on brief, without oral argument, and the brief need not contain any statement of the case, or anything but a skeleton statement of the points insisted on.

Neither record nor briefs are required to be printed or even typewritten, and but one record is required to be furnished for the use of the three judges who must decide the case.

The facilities in this respect, furnished to the Georgia courts of last resort to-day, are fewer and poorer than those furnished when the Supreme Court of Georgia was organized.

Rule XIV of the Original Rules required that

"The counsel for the plaintiff in error shall furnish each of the judges and the reporter with a copy of the bill of exceptions (the bill of exceptions then contained the brief of oral and copy of written evidence adduced below) and a note of the questions or points intended to be made and a statement of the facts in the cause, which shall be submitted to each of the judges and the reporter at or before the first day of the term to which the case is returned, with a list of the authorities expected to be relied on."

This remained the rule of the Supreme Court until June 17th, 1873, when it was repealed and in its stead it was ordered that on or before the calling of the case for hearing the counsel for the plaintiff in error should furnish to each judge and the reporter a printed or plainly written brief of the points intended to be made in argument and a printed or plainly written abstract of all of the facts of the case necessary to a full understanding of the questions in the case, the same to include an abstract of all pleadings, motion for new trial, brief of evidence, bill of exceptions, or other record. He was also required to furnish a copy of this abstract to

counsel for defendant in error at least forty-eight hours before the calling of the case. The case was to be argued on this abstract. The defendant in error if not satisfied with the abstract thus furnished, might furnish one of his own, or present in writing corrections deemed necessary.

The court, the rule stated, would examine the record when deemed important; but the clear purpose was to dispense with the necessity of so doing where both sides were in agreement as to the case made by the record.

When these rules prevailed the typewriter with its manifold copies were unknown. The copies required were all the product of the pen.

It is plain that every judge who is called on to decide a case should be furnished with a copy of the record thereof, or so much as is needed for its proper consideration, together with a copy of the briefs of counsel.

The majority of the States require record and briefs to be printed. A number of these States are no richer than Georgia, and many are less populous, and certainly if printing is not required, the furnishing of a number of typewritten records, or complete statements of the case with the briefs of counsel, sufficient to furnish each judge, the reporter, and opposing counsel with a copy, should be required.

Some courts compel the plaintiff in error or appellant to prepare and file a statement of the case containing reference to the record by pages, which has been submitted to opposing counsel and is subject to suggestions of corrections. This is not substantially different from the rule adopted by the Supreme Court of Georgia in 1873, and contains what seems to the writer a proper principle.

When we consider that counsel in a case are authorized to agree upon the facts and submit a case for decision thereon; that they can even confess judgment for their clients; that they can bind them by any agreement respecting the trial and conduct of their cases, except in the few instances named in the Code limiting these powers; and that they are officers of court, it is most proper that the rules of court should pro-

vide for the condensation of the record into a statement which if not objected to in the manner the rule prescribed, shall stand as a formally agreed statement of the case binding on counsel and constituting the case which the Appellate Court is called on to decide.

It can safely be assumed that a statement thus consented to by counsel is more apt to bring before the court the true and vital cause than can be drawn from an examination of the record. For every error which thus might arise, there is greater liability to erroneous conclusion being drawn from the voluminous record not thus stated.

Besides, where the parties formally agree that their case is as thus stated, it is a formal judicial admission and should be entitled to absolute credence and to be substituted for all other statements. Whatever the case has been it is agreed that the parties withdraw all other statements.

It would be highly advisable to provide by rule that any case might be brought to the Appellate Court on a case stated, agreed to by the parties, which had been submitted to and approved by the court below.

In discussing remedies for relief of the Appellate Courts, the Supreme Court in its two divisions, and the Court of Appeals should be considered as one Appellate Tribunal. The changes in the Appellate Tribunals, since the adoption of the Constitution, have all had but one object, namely, the relief of the Supreme Court, and the caring for its business.

The increase of the Supreme Court bench and the institution of the Court of Appeals were but means to this end.

The official force, therefore, which is to dispose of writs of error are nine judges. The fundamental requirement is that each case appealed is entitled to be heard before a court of three judges, two constituting a quorum and necessary for a decision.

In our present situation what is the most effective way of handling this business and utilizing this force?

The facts above given show that with two separate courts

the smaller number of cases go to the court with six judges and the larger number to the court with three judges.

While the number of criminal cases and cases from minor courts may render the questions in many cases in the Court of Appeals comparatively simple, and while the cases in the Supreme Court are doubtless, on an average, heavier, this points to an inequality of distribution of labor.

It is also doubtless true that the practice of the six judges, endeavoring to take part in every decision of the Supreme Court necessitates a greater consumption of time in disposing of cases in that court.

The report of the Commission on Judicial Procedure above cited states that in the Court of Appeals the average time from the filing of the record to the decision was then (July, 1914,) six months and one week, and in the Supreme Court twelve months and one week.

While the practice in the Supreme Court of filing to terms could have now no influence on the time elapsing from filing to decision in that court, the contrary practice in the Court of Appeals doubtless has prevented some extension of the interval in that tribunal.

While the concurrence of six judges in each decision is to be much desired where the court can, within reasonable limitation of time, accord this privilege; it is much more essential that the cases in the Supreme Court should be decided by a bench of three judges who are not overworked, that they should be heard and decided promptly, and that the danger of affirmance by operation of law should be avoided.

The constitutional amendment which increased the number of Supreme Court judges did not suggest that cases heard before the court sitting in divisions, should be decided otherwise than by the judges hearing the case. The entire provision is:

"The Court shall have power to hear and determine cases when sitting either in a body or in two divisions of three judges each."

Clearly this contemplated that those who heard were those empowered to determine. As the increase was in order to relieve the overworked court of three judges, the purpose to create another equally efficient bench of three is apparent.

A proviso of the Act of 1896, however, required:

"That the court shall, as far as practicable, endeavor to so conduct its proceedings as to have the concurrence of all of the justices in all judgments rendered, 'except in cases of express dissent'."

This Act, however, also provides that either division may render a final judgment with the same effect as the court as a whole.

Manifestly the main purpose of the Constitution should not be defeated when the business has grown to the point where it is not practicable longer to *endeavor* to have the concurrence of all of the justices in every judgment rendered.

The power of the courts to make rules is broad.

The Code Section 4641 reads:

"The rules of the respective courts, legally adopted, and not in conflict with the Constitution of the United States and of this State, or the laws thereof, are legally binding and must be observed."

The entire organization of the Supreme Court, as now existing, was created by the Amendment of the Constitution proposed by the Legislature in 1895, and ratified October 7th, 1896. In addition to the general authority of all courts, the Supreme Court is expressly given "full power and authority to make all such rules, not in conflict" with the Constitution and laws as may be necessary to carry the Constitutional Amendment into effect, and regulate proceedings thereunder.

The writer, therefore, would suggest the advisability of the following changes in our laws:

First. That the Court of Appeals be merged into the Supreme Court as a division, constituting a Supreme Court of nine judges, empowered to sit in divisions of three judges

each; the court in bank to consist of not less than five judges as a quorum.

Second. That in so changing the Constitution the requirement for all cases to be decided by the end of the second term be modified, so that a motion for rehearing may be made and decided within such time as the rule of court permits, beyond such second term. This is now the law as to cases certified by the Court of Appeals to the Supreme Court.

Third. That no writ of error be allowed in any case originating in a justice or county court unless the judge of the Superior Court before whom it is tried, on appeal or *certiorari*, shall certify within ten days from the date of such trial that in his opinion a writ of error to the Supreme Court should be allowed.

Fourth. Provide by statute that all cases other than fast writs go to the Supreme Court as now provided for the Court of Appeals, leaving fast writs to go up as now provided.

Fifth. Provide by rule of court that all records, transmitted to the Supreme Court, shall be prepared by the clerks below on paper of a certain size and be plainly *typewritten*, the original bill of exceptions to be retained in the clerk's office, a copy being sent up as a part of the record.

Sixth. That upon the record of a case reaching the Supreme Court the clerk shall by mail notify counsel for the respective parties as shown by the record, and that plaintiff in error shall, within a fixed number of days from the time said record is filed in the Supreme Court, file in the office of the clerk of the Supreme Court a printed or typewritten abstract of the record including the bill of exceptions, with references to the pages of said record, and with a statement of the errors insisted on, with evidence that a copy thereof has been served on the opposite side. The opposite side shall within a fixed number of days after such service, file any additions or corrections desired, with evidence that the same has been served, on counsel for plaintiff in error. If no corrections or additions are so filed the abstract will be deemed correct, conclusively, and the case will be submitted and decided thereon

subject to the right of the court to look to the record for any additional information if they find the abstract lacking in some necessary particular, or the court may call on counsel for further references to or abstract of, such record.

Seventh. If counsel for plaintiff in error contest the corrections or additions suggested by defendant in error, the same shall be taken up with one of the justices of the Supreme Court in a manner to be fixed by rule, and the facts settled by him. If not so taken up by the objector, such objections shall be deemed abandoned. Each case shall be docketed for argument as soon as the time for filing abstracts, briefs or corrections has expired, unless it is under submission to a judge for corrections, and then so soon as such corrections are settled.

Eighth. The time fixed for the filing of records, of abstracts, corrections or briefs, or doing any other things herein required, may be extended, from time to time, for good cause, by order of a judge of the Supreme Court.

Ninth. Where the plaintiff in error shall fail to file the abstract here required within the time allowed by rule or as enlarged by order, the clerk shall call the attention of the court to such default and the case shall be dismissed for want of prosecution unless the court shall see fit to otherwise direct.

It may be advisable to except fast writs and criminal cases from this rule; but in that event the rule should provide that the court may, by order, require the filing of abstracts of all, or any part of the record, by either side, as above, before or after the argument, on such terms, and within such time, as the order fixes.

The Supreme Court of the United States, in the Revised Equity Rules promulgated by it, has provided that parties may by consent, with the approval of the district court or the judge thereof, prepare and file an agreed case, stating the questions involved, and the necessary facts alleged and proved, or sought to be proved, and this case may be taken to the Appellate Court, superseding all parts of the record except the decree appealed from. This stated case, with such

decree, then constitutes the record on appeal. The powers of the Supreme Court of the United States to make rules are no broader than those of the Supreme Court of Georgia.

Under the provisions of the Act of 1899 for condensing records, a bill of exceptions containing such an agreed statement and stating that no parts of the record were needed, if certified by the judge below, would constitute a good case in the Supreme Court.

That court might well offer a premium for such saving of labor to it by providing, that on a case so brought up copies of the bill of exceptions could be furnished instead of abstracts and the case would be advanced for argument and decision next after fast writs and the State's cases.

Tenth. Printed or typewritten copies of abstracts, corrections or additions sufficient to furnish one to each judge presiding, and to the reporter, should be required.

Eleventh. The rule should require briefs to contain, first, a statement of the case; and, in the case of the plaintiff in error, of the errors complained of; and then of the points insisted on with the authorities relied on. Such briefs should be printed or typewritten.

Twelfth. The rules should provide that:

(a) The court may reject any brief for failure to comply with the rule, or, where the case is submitted, for lack of sufficiency, and may put the party on terms as to filing additional briefs, and in default the case might be dismissed for want of prosecution.

(b) The court, unless it shall order a case heard before a full bench, shall sit in divisions and only the judges presiding shall take part in the decision and judgment.

(c) Any division may, either before or after argument before it, direct a case to be heard before the full bench. Where it is heard before a full bench, each judge shall be furnished with an abstract and brief.

(d) The remittur shall not issue for twenty days after decision, unless by consent or on order by the court for special cause, and the clerk shall notify counsel promptly of

any decision. A motion for rehearing may be made within such twenty days, or such extension as the court may by order allow, whether the term has adjourned or not, or the court may withdraw its decision within such time and order a rehearing.

Such provision for notice and rehearing would furnish opportunity to investigate and correct any suggestion of mistake as to the facts of the case, or any suspected conflict with other decisions of the court.

The bench of three should be the rule in all cases except of great moment. This is but a return to the original bench. It is the number of the United States Circuit Courts of Appeals; while the full bench of nine would be related to the Divisions as the United States Supreme Court stands to the United States Courts of Appeal.

The bench of three offers the advantage of reducing the labor and increasing the speed of each division, while leaving the entire distribution of business and assignment of judges to divisions to be dealt with by the court, thus allowing changes to be made with ease as varying conditions require.

There is also a matter relating to procedure in the Appellate Courts, which although it does not bear on the conduct of the case by the litigants, or the dealings of counsel with each other, or with the court, seems to the writer, of prime importance.

It is possible that the courts have some rule on the subject; but if so, the bar is not advised of it, and it would be conducive to a better understanding and co-operation between the bench and bar, if the methods of procedure for the consideration and decision of cases were known.

Before the dockets of the Supreme Court of Georgia became so crowded the court met on Monday for consultation. The following day decisions were announced.

These decisions were generally those which had been agreed upon at the consultation of the preceding week and the decisions had been prepared during the last week. In cases of difficulty or difference of opinion they might be held

longer, but the consideration of the case on a fixed day, and an early decision, was the rule.

While the crowded condition of the docket may render this practice impossible, the necessity for regular procedure, for early decision, and for fixing some time to which all should work in filing opinions after cases are submitted, is indispensable to that speeding of business which has now become the paramount consideration.

A number of Supreme Courts still have regular days at short intervals, upon which the court announces its judgments. Also they have fixed days for meeting in consultation.

The bar and public know that shortly after cases are argued, or submitted, the bench will meet in consultation and vote on the decision of the case, and that, except in cases of difficulty or division, they will be then disposed of and the judgment announced soon thereafter.

This practice not only insures a certain organization and regulated procedure, moving the case on from the time of submission to the time of decision; but it is a demonstration to the public of the activities of the court.

Where the practice of fixed dates for decision has been abandoned, it is more than ever necessary that there be some fixed times and rules for the taking up and decision of cases, and that the bar and public should be apprized of them.

If there is no spur of a fixed time to vote on a case, then the natural tendency to delay has no check. The work is not organized.

It is most respectfully submitted that the courts should promulgate and publish the rules of its own procedure as to the taking up and decision of cases; if for no other reason than to let the bar and public understand the rapidity with which it must work to keep up.

It is also urged that a case should not be called, for submission or argument unless the court is able to take it up for consideration within a short time thereafter.

It is a simple matter of arithmetic that time is lost and not gained by the cases being called for argument and submission,

so long before they are taken up, that the proceedings then had, are forgotten, or nearly so, before the case is considered.

If the law renders this necessary, then the necessity for a change in the law has become apparent.

If with a demonstration of rapid decision, the docket is falling behind; the more that is shown the more apt is there to be some relief devised.

As it is now, all the delay is between apparent argument, submission, and decision, with no public demonstration that the case really has not been reached by the court.

It is also respectfully suggested that where the court affirms a case as involving no new principle, no opinion, or statement of facts should be written out.

The parties to the case know what are the facts, and to others the statement is of no value. Nor is a decision predicated solely on the concrete facts of a case likely to ever find its exact parallel, so that if a single fact differs the authority of the ruling is destroyed.

Reducing the number of opinions published as authority would also serve to lessen the labors of the court, would make it easier to avoid apparent conflict in decisions, and prevent the multiplication of the volumes of reports now growing so fast. This would cause the opinions published to be held in higher estimation as precedents.

Of course, at first, there might be complaint at the increased labor these changes would entail; but the bar must be prepared to aid the court, and the court must be firm in applying rules necessary for relief, or we cannot hope for anything of permanent value.

The cordial co-operation of the bar in, and the endorsement by this Association of, whatever plan is adopted is due to the courts.

It is not fair to put on the judges the entire responsibility of coercing relief by the exercise of the power to make rules.

But if the bar will support the bench, and request the judges to make use of their powers, and then lend a cordial, and not a grudging, obedience we may hope for substantial results.

THE RELIEF OF GEORGIA APPELLATE COURTS.

PAPER BY

A. A. LAWRENCE,
OF SAVANNAH.

Mr. President and Members of the Association:

The necessity for relief of the Appellate Courts has existed so long, and the urgency has increased with such rapidity that discussion has been multiplied and variant plans for relief have been evolved. Many members both of bench and bar favor the abolition of the Court of Appeals and the addition of other divisions to the Supreme Court. Others favor a limitation of the right of appeal either by increasing the cost thereof by the printing of records, briefs, etc., or by the actual limitation of the right to appeal from the lower courts in a substantial volume of cases. Though this discussion has continued for a number of years nothing substantial has been accomplished in the way of affording relief to the crowded courts and we now find the dockets so congested that before a cause has reached its determination both lawyer and litigant have lost interest in the result. At one time in the history of the Supreme Court, and within the recollection of many of those now present, a case was argued one week and decided within ten days after argument. Now neither lawyer nor litigant can with certainty hope for a decision of his case until the second term after he has sued out his writ of error. This condition is becoming intolerable to the overworked judges of the Appellate Courts. It is especially hurtful to both lawyer and litigant.

In dealing with corrections of defects in a judicial system the practical as well as the ideal must be considered. Men's minds divert so greatly as to the ideal that much compromise must be made to obtain the practical, hence the judicial sys-

RELIEF OF APPELLATE COURTS

long before they are taken up, that the process is forgotten, or nearly so, before the case is decided. If the law renders this necessary, then the necessity in the law has become apparent.

If with a demonstration of rapid decision, the delay is being behind; the more that is shown the more likely will be some relief devised.

As it is now, all the delay is between apparent decision, and decision, with no public demonstration. The case really has not been reached by the court. It is also respectfully suggested that where the case as involving no new principle, no opinion of facts should be written out.

The parties to the case know what are the facts. The statement is of no value. Nor is a decision based solely on the concrete facts of a case likely to be of exact parallel, so that if a single fact differs the ruling is destroyed.

Reducing the number of opinions published would also serve to lessen the labors of the court, would be easier to avoid apparent conflict in decisions, and would reduce the multiplication of the volumes of reports now growing. This would cause the opinions published to be of higher estimation as precedents.

Of course, at first, there might be complaint at the increase, but these changes would entail; but the bar must be persuaded to aid the court, and the court must be firm in applying the law. It is necessary for relief, or we cannot hope for anything of permanent value.

The cordial co-operation of the bar in, and the endorsement by this Association of, whatever plan is adopted is essential to the success of the courts.

It is not fair to put on the judges the entire responsibility for the delay, and to coerce relief by the exercise of the power to make rules. But if the bar will support the bench, and request the judges to make use of their powers, and then lend a cordial and ungrudging obedience we may hope for substantial relief.

tem has suffered because the bench and bar have failed "to get together" upon any practical solution of the question. The necessity for a change in our judicial system had become so acute that at the last session of the General Assembly a bill was introduced into both branches of the Assembly to amend the Constitution by providing for an increase in the number of judges of the Court of Appeals, and a re-arrangement of the jurisdiction of the two Appellate Courts. This bill came before the Committee on Constitutional Amendments in the Senate and was reported out by a substitute prepared by the Committee. The essential features of the bill reported by the Committee are as follows:

The Supreme Court shall have no original jurisdiction but shall be a Court alone for the trial and correction of errors in law from the Superior Courts and the City Courts of Atlanta and Savannah and such other like Courts as have been or may hereafter be established in other cities, in all cases that involve the construction of the Constitution of the State of Georgia or of the United States; in all cases in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question; and until otherwise provided by law in all cases respecting title to land; in all equity cases; in all cases which involve the validity of or construction of wills; in all *habeas corpus* cases; in all cases involving extraordinary remedies; in all divorce and alimony cases; and in all cases certified to it by the Court of Appeals for its determination. It shall also be competent for the Supreme Court to require by *certiorari* or otherwise any case to be certified to the Supreme Court from the Court of Appeals for determination with the same power and authority as if the case had been carried by writ of error to the Supreme Court.

The Court of Appeals shall have jurisdiction in all cases in which exclusive jurisdiction has not been conferred by the Constitution upon the Supreme Court.

The Constitution of the Court of Appeals under the proposed amendment is such that it shall be composed of two divisions of three judges each, who are required by the amend-

ment to sit separately and decide their cases separately so that to all intents and purposes there shall be two Courts of Appeals, each issuing its own separate and final judgments; conflict in their decisions being prevented by the Supreme Court having the right to exercise the power of *certiorari*.

A full explanation of the intent and purpose of the amendment may be summed up in the statement that it is modelled substantially after the Appellate system of the United States.

One of the criticisms most often urged against the Court of Appeals is that it does not follow the decisions of the Supreme Court. Whether this criticism be just or unjust, if the proposed amendment to the Constitution is adopted, this complaint can no longer be made.

It is estimated that under the proposed distribution of business the Supreme Court will have about sixty per cent. of the business now before it and each division of the Court of Appeals will have about seventy-five per cent. of that which is now before the Court of Appeals. The bill is so framed that the Legislature may at its option add additional divisions with the consequent increase of judges so often as may be necessary; so that if this amendment carries, the Legislature may establish additional courts according to the exigencies of the docket.

The proposition contained in this proposed amendment to the Constitution met with much favor. The substitute reported by the committee received the unanimous endorsement of the Committee and it may be said that the chances for the passage of the bill are most substantial.

The exigencies of the Courts, however, are of such nature that something must be done immediately. On May 12th, 1916, there were in the Supreme Court more than three hundred cases of the October Term undisposed of. In the Court of Appeals there were about two hundred and twenty cases undisposed of. Even these figures are misleading as the dockets of the Courts are closed in the middle of the term so that many cases which should have been docketed for the October Term were placed upon the docket of the March

Term. To illustrate: the Supreme Court has ordered its docket for the March Term closed July 3rd. Neither in the Supreme Court or the Court of Appeals have any substantial number of the March, 1916, term cases been argued. This condition, unless remedied, necessarily presages either judgments without mature consideration or affirmance by operation of law. To meet this exigency various suggestions have been made. For the Court of Appeals it is suggested that a bill be urged at the opening of the General Assembly increasing the number of Judges. So far as the Court of Appeals is concerned this may be done by the General Assembly under the present Constitution.

For the relief of the Supreme Court it has been suggested that a bill be passed authorizing the Governor to appoint three Commissioners, each member of which shall be a member of the Bar of the State of Georgia of known experience and ability, who shall receive competent compensation during the time he is occupied in the work of the Commission. It shall be the duty of the Supreme Court Commissioners, under such rules, orders and regulations as the Court may adopt, to assist the Court in the disposition of cases pending therein upon the date of the approval of the Act. The Commissioners in all cases submitted to them for examination shall make their findings and opinions in writing to the Supreme Court to be remanded, adopted or rejected in whole or in part under such rules and regulations as the Court may prescribe, and the Court shall render such opinion or opinions and render such judgment in such cases as the Court may deem proper.

It is also suggested that a permanent provision be made for the appointment of a Commission whenever the Judges of the Supreme Court shall unanimously certify to the Governor that the exigencies of the Court are such that the appointment of a Commission is required.

The suggestion as to the appointment of Commissioners for the relief of the Supreme Court originated with the judicial system of Oklahoma, which has an Act framed substan-

tially along the lines indicated. A review of the decisions of the Supreme Court of the State of Oklahoma contained in any of the recent volumes of the Pacific Reporter will illustrate the operation of such system. Whether it be necessary or not to arrange for appointments of future Commissioners, it is apparent that under our Constitution this is the only practical plan for immediate remedy and relief of the Supreme Court.

I think I am authorized to say that so far as the members of the Bar now in the General Assembly are concerned they will with cheerful willingness use every reasonable effort to increase the efficiency of our Appellate Courts. In my opinion, however, no bill can be passed through the General Assembly at this time which limits the right of appeal or increases to any material extent the expenses incident to a writ of error. The right to demand calm, cold, intelligent and impartial judicial judgment is held to be too precious by the litigant to be modified or impaired in the slightest degree. The duty of the Government is to afford the citizen the machinery for having his rights, great or small, adjudicated with impartiality, with the greatest exercise of intelligence, and as speedily as is consistent with proper deliberation. If the machinery provided by the Government becomes overtaxed, it is the duty of the Government to supply additional machinery rather than limit the right of refined judicial determination.

These views, I think, are entertained by those members of the General Assembly who have given the situation serious thought. In my opinion they will, in view of the present emergency, agree to any well-matured plan that promises quick relief from our overworked system.

In conclusion, permit me to say, that in my judgment the most effective course this body can pursue will be to appoint a strong committee who will appear before the committees of the House and Senate, present to them the seriousness of the present situation and urge the passage of such remedial legislation as may seem to them to have the best prospect of passage.

THE RELIEF OF GEORGIA APPELLATE COURTS.

PAPER BY
WARREN GRICE,
OF MACON.

That the Supreme Court and the Court of Appeals need relief from their labors, is, I take it, the conviction of every thoughtful Georgia lawyer. The accomplishment of this by way of constitutional amendments is cumbersome and exceedingly difficult, and no immediate action along that line is looked for.

The Legislature could, by adopting some of the admirable suggestions already made by members of this Association, enact laws which would greatly remedy the situation; but this condition has existed for many years, and no relief is in sight. Some relief in some way must be had. Since the efforts of this Association have not so far succeeded in arousing the people or the lawmakers to the gravity of the situation as it exists, let us take to heart the lesson of Aesop's fable about the farmer and the field of grain to be cut, and the bird with a nest full of young, and urge the Court not to rely longer on the hope of constitutional amendments, or the General Assembly, but to cut the ripe grain themselves.

Can our courts of review so amend their rules as to afford them an appreciable measure of relief from the crowded condition of their dockets; and could this be effected without detriment to the parties having business before the courts; and would the bar take kindly to the amended rules?

I believe that each of these questions should be answered in the affirmative; and though the suggestions here made are not original, the very fact that they have been discussed from time to time by the lawyers is the chief reason for bringing them forward now.

It is not in the power of those courts to accomplish, by these new rules, all that is desired, but it is believed by many of us that they would be a great aid thereto, and would perhaps suffice until such time as the whole State is sufficiently awakened to a realization of the existing situation to afford adequate relief.

Require the briefs to be printed. This would mean better briefs, so far as the technical make up is concerned, and easier read, and therefore a saver of time and labor on the part of the judges. This requirement would also result, probably, in a more helpful brief so far as the matter in it is concerned. A rule which necessitated the printing of the brief would tend to dignify this part of the lawyer's labor on the case, and his pride in the preparation of a good printed brief would cause him to submit to the Court a better brief. And since this would entail an outlay of money, either by himself or his client, and less type, less cost, the effect would be to have him be more concise in his statement of fact, and would prevent him from padding it. Thus the court would be aided again, and their labors lessened.

Such a new rule would decrease the number of cases carried up on account of the expense of printing the brief.

It is not great hardship on a client to have the briefs printed. Many courts require it. But it seems to me that if we add somewhat to the cost of litigation, we reduce in a measure the number of bills of exceptions — for the cheaper the cost of litigation, the easier it is to litigate, the more of it we will have.

If your client asks you why this new rule, tell him frankly that it was born of a necessity to prevent a number of frivolous cases from being taken to the Supreme Court and the Court of Appeals; and if the cost of printing the brief acts as a deterrent, then the purpose in part is accomplished.

Require an abstract printed. Let the plaintiff in the writ of error do this. Let it contain a brief statement of every point which he considers made by the bill of exceptions, with the page of the bill of exceptions and of the record pointed

out on which may be found all that pertains to each particular point. Require that he shall, a certain number of days before the case is called for argument, serve the other side with a copy of such an abstract; and make it the duty of the other side within a certain number of days thereafter to either agree to it or point out the portions to which he does not agree. Let the abstract and the reply thereto be filed in the office of the court of review as a part of the record.

To prevent counsel from making up moot questions, let them certify that in their opinion the abstract fairly states the record and the points made for decision, and none others.

Permit counsel to enter into a waiver to try the case on the abstract, instead of the record.

This last rule, it seems to me, would relieve the court of much unnecessary labor. It would frequently prevent them from having to read and study and analyze long records. It would focus the issues. It would more clearly state the disputed points. It would take away from the lawyer, it is true, when he lost his case in the higher courts, the excuse for saying, "They never even read the record," and, speaking seriously, it would then be more difficult to overlook a point hidden away in a long, sometimes confused, record.

Doubtless the promulgation of two such rules would not meet with the universal approbation of the bar, but there is nothing radical about the proposition, since a number of other courts of review have similar requirements.

If it will result either in diminishing the number of cases, or in lessening the time necessary to be spent by the judges in getting hold of the controlling facts and the issues of law involved, it may at least postpone for a few terms that condition which now almost always confronts us, having a large per cent. of the judgments affirmed by operation of law.

LEGISLATION SUGGESTED.

PAPER BY
A. W. COZART,
OF COLUMBUS.

Mr. President and Gentlemen of the Georgia Bar Association:

Mr. Ernest Hamlin Abbott says, "There are some who regard vested wrongs as entitled to the same security that should be assured to vested rights." I am not quite sure that I know what he means by "vested wrongs." It may be that he means that there are those who prefer to have no changes made in the existing laws, notwithstanding the fact that they may be very defective.

I have been engaged in the general practice of the law for a quarter of a century, and I have observed during that time that we have many statutes in Georgia which should be repealed, that we have some which should be amended, and that there are many evils for which no remedy exists.

I.

NEW TRIALS—BRIEF OF EVIDENCE.

Where the grounds of the motion for a new trial do not require the consideration of the evidence introduced upon the trial, it is vain and foolish to require a brief of evidence, but under the present law a brief of evidence is indispensable to a valid motion for a new trial. *Whitaker v. State*, 138 Ga., 139, 140; *Moxley v. Ga. Ry. & El. Co.*, 122 Ga., 493, 494.

It should be provided by statute that where the grounds of the motion for a new trial do not require the consideration of the evidence introduced upon the trial, that no brief of the evidence shall be required. And it should be provided that in such a case, the trial judge shall certify that a brief of the

evidence is not necessary in order to consider the grounds of the motion.

At least one-half of the labor and one-half of the cost incurred in connection with motions for new trials may be saved by enacting a law in conformity with this suggestion.

II.

NEW TRIALS—TERM ORDERS.

It should be provided by statute that the trial judge shall not lose jurisdiction of a motion for a new trial while the same is pending, and that he shall have power to permit the movant to perfect his motion for a new trial by presenting and filing a brief of the evidence at any time at or before the hearing of the motion, whether an order were taken in term time, or not, for that purpose.

Under the ruling made in the case of *Rodgers v. State*, 11 Ga. App., 368, and cases therein cited, the necessity for legislation on this subject will be made very apparent to every lawyer.

III.

DEEDS TO SECURE DEBTS—SERVICE BY PUBLICATION.

Where one executes a promissory note and a deed to realty to secure the same, and the maker of the note is at the time, or thereafter becomes, a non-resident, it should be provided by statute that the holder of the note may file a suit against the maker of the note in the county where the land lies and perfect service with the defendant by publication and that the effect of the service shall be the same as though the defendant were served personally, so as to enable the plaintiff to obtain a judgment, file and record a quit-claim deed to the land to the defendant and sell the same.

The holder of the note, in such a case, should not be forced to file an action to eject the debtor from the land.

IV.

FORECLOSURE OF MORTGAGES—SERVICE RULE NISI.

Section 3276 of the Code, relating to foreclosure of mortgages on realty, should be amended by striking out the words,

"which rule shall be published once a week for four months, or served on the mortgagor, or his special agent or attorney, at least three months previous to the time at which the money is directed to be paid into court," and inserting in lieu thereof the words, "which rule shall be published once a week for four weeks (the first insertion to be published within two weeks after the rule is granted), or served on the mortgagor, or his special agent or attorney, within one month after the rule has been granted."

In counties where there are four or six terms of the Superior Court in each year, under the present law there is not sufficient time within which to publish the rule, and in counties having six terms of the Superior Court a year, there is not sufficient time to perfect service personally.

The amendment suggested would give the debtor ample time to comply with the rule by paying the money into the court.

V.

NUNCUPATIVE WILLS—ABOLITION OF.

Sections 3925, 3926, 3927 and 3928 of the Code, authorizing the making and proving of nuncupative wills should be repealed and such wills should be prohibited by statute. The provisions of the law authorizing nuncupative wills encourage perjury. I think that not one in a thousand of alleged nuncupative wills is entitled to probate.

By the statute of wills (1 Vict. chap. 26), applying to all wills made on or after January 1, 1838, nuncupative wills (or other testamentary dispositions) are altogether rendered invalid. The exception, however, in favor of soldiers and mariners has been continued by the 11th section of the statute, which provides and enacts that "any soldier being in actual service, or any mariner or seaman being at sea, may dispose of his personal estate, as he might have done before the making of this act." (See article by E. Vine Hall, of London, England, on "Wills in War," which appeared in

October, 1915, Case and Comment, and also which appeared in *The Cooperator* for December, 1915 B.)

VI.

PETITION FOR CHARTERS—NOT PUBLISHED.

Sub-section 1 of Section 2822 of the Code, relating to the creation of charters by Superior Courts, should be amended by striking out that part thereof requiring the publication of the petition or declaration. I do not suggest, of course, that where a proceeding is had to amend a charter that a petition for the amendment should not be published, or that a short notice, at least, should not be published, for stockholders should be given notice in this way if an application should be made for an amendment, and where an application is made to dissolve a charter the notice should be published as the law requires, but there is no good reason why the petition for the original charter should be published as is now required by law.

An amendment as herein suggested would save the petitioners many dollars and would save much time in obtaining the charter.

The power conferred by the constitution upon the courts to grant charters to corporations is legislative and not judicial in its character; and there is no provision of law authorizing any one to appear and object to the grant of corporate powers by the courts, nor is there any provision for a review by the Supreme Court, by writ of error or otherwise, of the action of the Superior Court in granting corporate powers to private corporations. *The Gas-Light Company of Augusta v. West*, 78 Ga., 318.

If, for any reason, any notice should be published, it would suffice to publish a notice of forty or fifty words once a week for two weeks.

VII.

REPEAL OF SECTION 1068 OF PENAL CODE.

Section 1068 of our Penal Code should be repealed. The section is as follows:

"If any person, who has been convicted of an offense and sentenced to confinement and labor in the penitentiary, shall afterwards commit a crime punishable by confinement and labor in the penitentiary, he shall be sentenced to undergo the longest period of time and labor prescribed for punishment of the offense of which he stands convicted."

This section is most unjust, cruel and iniquitous, if not infamous. I believe it has been practically a "dead letter," or it would have been repealed long ago.

VIII.

ELECTION TO TAKE CHILD'S PART.

Sub-section 3 of Section 5249 of the Code, relating to the barring of dower, by the election of the widow to take a child's part, should be amended by striking out the words, "within twelve months from the grant of letters testamentary or of administration on the husband's estate," where they occur therein, and by inserting in lieu thereof the words, "within twelve months from the death of the husband," or, within some other specified time from the death of the husband. If the widow take dower, she must do it within seven years from the death of her husband. Under the present law, there is no certainty that an administration will be had on the estate of a deceased husband.

IX.

ELECTION IN WRITING TO TAKE CHILD'S PART.

A widow should be required by statute to make in writing a formal election to take a child's part, if she desire to make an election to take a child's part, by filing the same in the office of the clerk of the superior court of the county where the husband resided at the date of his death, if a resident; and if not a resident, in the county where the land lies, in which the child's part is taken, and the same should be recorded in the office of the clerk in the same manner as deeds are recorded. The election should be made in writing and recorded, whether it relates to realty or personalty. To

allow the widow to make the election, not in writing, but by other acts or other "conduct," makes it very difficult to ascertain the rights of the parties and makes it very difficult to trace the title to the property; and there is no good reason why the law should remain in its present vague, uncertain and indefinite state.

X.

YEAR'S SUPPORT FOR WIDOW.

A widow should be required by statute to file her application for a year's support within some definite time. Of course, ample time after the death of the husband should be given.

XI.

USURY.

Our usury laws are too complicated and the penalties are too numerous. In many cases great injustice is done by reason of these laws.

1st. Usury forfeits the excess of interest. Sec. 3438 of the Code.

2nd. Titles tainted with usury are void. Sec. 3442 of the Code.

3rd. Usury voids the waiver of the homestead. *Cleg-horn v. Greeson*, 77 Ga., 343.

4th. Usury releases a surety who signs a note or obligation without knowing of the usury, if the note or obligation contain a waiver of homestead. *Prather v. Smith*, 101 Ga., 283 (2).

5th. Usury voids the power of sale in a security deed. *Pottle v. Lowe*, 99 Ga., 576. It does not void the power of sale in a mortgage. *Payton v. McPhaul*, 128 Ga., 510 (5).

These penalties do not apply to obligations executed to National Banks. *First National Bank of Dalton v. McEntire*, 112 Ga., 332.

We also have a statute, Section 3444 of the Code, making it a misdemeanor to reserve, charge or take, etc., a rate of interest greater than 5 per cent. per month. I do not sug-

gest that this section be repealed or amended, but I do suggest that the other penalties should be abolished and that we should have one definite penalty similar to the one provided by Section 5198 of the Revised Statutes of the United States, which provides that the knowingly taking, receiving, reserving, or charging of usury by a national bank shall be deemed a forfeiture of the entire interest, and in case usury has been paid the bank, shall be liable for twice the amount of the interest paid, provided suit is brought for the same within two years from the time the usurious transaction occurred.

The penalties fixed by this Act upon national banks have been held by the courts to be exclusive.

It is very difficult, if not impossible, for business men generally to understand our usury laws, and for this reason I think they should be simplified. Furthermore, I see no reason why such advantage should be given to national banks where usury has been charged, taken or reserved.

XII.

LIENS OF MATERIALMEN, CONTRACTORS, ETC.

1st. Sub-section 2 of Section 3353 of the Code, which relates to the declaring and creating of liens of materialmen, contractors, etc., should be amended by striking out the word "recording" in the first line thereof and inserting in lieu thereof the word "filing," and the clerk should be required to record the claim of lien as mortgages are recorded.

See *Jones v. Kern*, 101 Ga., 309 (2).

The holder of the claim of lien may be able to file his claim, but he should not be required to see that it is recorded.

2nd. Sub-section 3 of this same Code section should be amended by inserting at the end thereof the words "and deeds to secure debts which were made while the contract was being performed or material was being furnished and such deeds to secure debts as were made within three months after the completion of the contract or after the material was furnished."

In the case of *Bennett Lumber Company v. Martin*, 132

Ga., 491, it was held by the Supreme Court that "Where title to real estate is conveyed by duly recorded deed to secure debt, and the grantee takes the deed and advances the money loaned, without notice and before the record of a materialman's lien upon the property, the title thus acquired is superior to such lien."

Under this decision, notwithstanding the fact that the materialman may have been diligent and may have had the claim of lien recorded within the time allowed by statute, or even though he may have had his claim of lien recorded immediately after having furnished the material, he may lose the priority of his claim simply because the same was not recorded before the execution of the security deed. Under the present law, therefore, materialmen, contractors, etc., have very little or no protection, if the owner make a security deed immediately after the contract is completed or the material is furnished, for it is difficult to show that the holder of the security deed had notice.

3rd. Section 3354 of the Code, relating to mechanics' liens on personalty, should be amended by striking out the word "record" where the same occurs therein and inserting in lieu thereof the word "file," and the clerk should be required to record the same as mortgages are recorded. This amendment should be made for the same reason which I have assigned for the amendment suggested to sub-section 2 of Section 3353 of the Code.

XIII.

WRIT OF CERTIORARI.

Section 4365 of the Code, which is as follows: "All writs of *certiorari* shall be allowed within three months after the rendition of the judgment sought to be reversed," should be repealed, and there should be enacted a section in lieu thereof in the following language: "The petition for a writ of *certiorari* shall be filed in the office of the clerk of the Superior Court within ten days after the same has been sanctioned."

Under Section 5188 of the Code the writ must be applied

for within thirty days. If the writ is not issued for nearly three months after the judgment sought to be reversed was rendered, then, it is probable, that the magistrate will not be able to remember the evidence or the rulings complained of and it is probable that one term of the superior court will have passed, and for these reasons, or for some of these reasons, there is apt to be a miscarriage of justice or the party who may be in the right may be unnecessarily delayed.

XIV.

COSTS IN ACTIONS OF TROVER.

In an action of trover where the amount claimed is small or the value of the property involved is small, the cost should be fixed at some nominal amount for the entire proceeding, to be divided between the sheriff and the clerk, except the costs for serving *subpoenas* should remain as now fixed by law.

If the defendant be insolvent the plaintiff in every case is liable for the costs and where the property involved is of little value, it is much better, under the present law, for the plaintiff to lose his property than to pay the large amount of costs.

XV.

RECEIVING AND MAKING TITLES ON BONDS FOR TITLE.

Sections 4016, 4017, 4018, 4019, and 4020, relating to the receiving and making titles on bonds for title where the obligor or obligee in the bond, or both, may die, should be repealed. The executor or administrator should be permitted to execute a deed when he has received the purchase money and the executor or the administrator should be permitted to have a deed executed to him when the purchase money has been paid, and this should be done without requiring any proceedings in the court of ordinary. Where the holder for a bond for title is in possession and has paid the purchase money, he has a perfect equity, and he only needs a deed as an evidence of the title which he already has, and there would be very few cases where it would be necessary to resort

to a court to compel the execution of a deed, and, if any such case should arise, the parties could apply to a court of equity.

XVI.

LOSS FALL ON OWNER.

Section 4123 of the Code is as follows: "Where property is sold and delivered, but title is not to pass until payment in full of the purchase-money, and the property is lost, damaged, or destroyed without the vendee's fault, he is entitled to a rescission of the contract or to an abatement in the price, unless it is otherwise agreed in the contract of sale." This section of the Code is codified from three Supreme Court decisions. The rule laid down is contrary to the weight of authority. It seems that the Appellate Courts in eleven States and in Canada have laid down the rule that the risk of loss is to be borne by the buyer, and that he is liable for the price, notwithstanding the injury to or destruction of the property. I suggest that this section be amended to conform to the weight of authority and that it be amended so that the loss shall not fall on the owner unless the property is lost, damaged or destroyed on account of a defect existing therein at the time the purchaser went into possession of the property. 35 Cyc., 670.

XVII.

CERTAIN DECISIONS NOT REPORTED BY APPELLATE COURTS.

When Lord Reading, the Lord Chief Justice of England, recently came to this country as a member of the Allies Loan Commission, he made several speeches. In one of his addresses, the one before the New York Bar Association, he said: "Speaking for myself, I am strongly impressed day by day with the undesirability of the constant reporting of decisions which lay down no new principle, but only report the application of old principles to new facts. I think that I recognize a feeling of satisfaction which the members of the bar would have in getting rid of their thousands of volumes

of decisions, so that they might base themselves on the solid principles of the law."

I suggest that a statute should be enacted which would relieve the Appellate Courts from writing headnotes or opinions in the following classes of cases:

1st. In all cases where no demand is made in either the brief of the plaintiff in error, or of the defendant in error, that a written headnote or opinion be made.

2nd. In all cases where all the judges, or justices, concur in the decision and where they concur in the opinion that no principle of law decided in the case will be necessary or useful as a precedent.

**REPORT OF THE COMMITTEE ON
MEMORIALS.**

*The President of the Georgia Bar Association, Savannah,
Georgia:*

Sir: As Chairman of the Committee on Memorials, I beg leave to report that during the last official year five of our brethren have departed this life.

I herewith submit the memorials of our deceased brethren, with the hope that the Association will pardon these incomplete tributes to our worthy dead.

Very respectfully,

ROBERT L. BERNER.



J. R. Lamon

MEMORIAL OF JOSEPH RUCKER LAMAR.

BY THE COMMITTEE.*

Mr. President: So much has been written and truly and beautifully written of Mr. Lamar; so much has been said, and truly and eloquently said of him, it would seem that eulogy has exhausted itself. In the brief period since his death, the Bar of his native City, the Bar of the Supreme Court of Georgia, and the Bar of the Supreme Court of the United States have given expression to their admiration of his exalted character, his vast learning, and his large practical wisdom. To these expressions of high esteem should be added the voices of the press throughout the Republic, which with one accord deplored his untimely death, yet rejoiced in the rich heritage of public service he bequeathed to his country and posterity.

Friendship has covered, alike, his name and his grave with its richest and noblest offerings.

Having read all these tributes to his life and character with pride and delight, we have come to the conclusion that his fame was safe in the holy keeping of his countrymen. Certain we are that nothing we can say could add to his imperishable glory.

From the long and radiant list of tributes to this remarkable man we have selected the memorial presented by the Committee of the Bar of his native City and ask that it be adopted as the expression of our high and sincere esteem.

We are informed that this chaste and eloquent memorial was prepared by that gifted and golden-hearted gentleman, Major Joseph B. Cumming.

Their beautiful and enduring friendship has become a tra-

*When this memorial by the Committee was presented, a resolution was adopted by the Association directing that the proceedings in memory of Justice Lamar in both the Supreme Court of Georgia and the Supreme Court of the United States be incorporated in the Report. See pages 40, 41. These two memorials are therefore incorporated herein following the memorial prepared by the Committee.

dition in the annals of our profession and a part of the history of our State. In the course of nature he should have preceded the great man whose virtues we this day commemorate. He survived to write his epitaph. It is as the dead would have had it, could his heart have had its way. In these lines the living friend has drawn a faithful picture of the great dead, and into them he has poured the love of his own bruised heart.

Nobler words cannot be found to express our own sentiments, and we ask that this memorial be adopted as that of the Association.

But no memorial of this body would be complete that did not contain an expression of our high appreciation of the splendid work he did as a member of this Association and the rich and valuable contributions he made to the profession. But in the memorial submitted to the Supreme Court of Georgia, occurs a just and eloquent tribute to his labors in this field of intellectual endeavor, which we take the liberty to adopt as an expression of our sincere and grateful appreciation.

"His historic and literary contributions to the profession may be found in the reports of the Georgia Bar Association of 1892, 1898, 1907, 1913, and embrace the following subjects: 'Georgia's Contribution to Law Reform,' 'Georgia Law Books,' 'A Century's Progress in Law,' 'History of the Establishment of the Supreme Court of Georgia,' 'Memorial of Chief Justice Logan E. Bleckley,' and 'The Bench and Bar of Georgia During the Eighteenth Century,' which he began with the query, 'Who was the first lawyer in Georgia?' and with characteristic tenacity of purpose pursued it until he found not only the first lawyer, but the first judge and first jury.

"His work in the preparation of these papers and addresses involving as it did the careful examination of the earliest records at home, including the voluminous Colonial and Revolutionary records of Georgia compiled by Governor Candler which he read through and upon which he made marginal notes, and the obtaining of some from abroad, is a monument of his passionate devotion to the earliest history of

Georgia. The historic knowledge furnished is of incalculable value to the present and future generations and the honor due for these treasures is increased by the fact that they were given without any thought of pecuniary reward, but from love of his State and profession."

MEMORIAL BY THE AUGUSTA BAR ASSOCIATION.

Joseph Rucker Lamar was born at Ruckersville, Elbert County, Georgia, October 14th, 1857. His parents were James S. and Mary Rucker Lamar. His father was an unusually able minister of the Christian Church, a preacher of great power and for many years pastor of the leading church of that denomination in the city of Augusta.

The subject of this sketch was a school boy in Augusta, and later a student and graduate of Bethany College, West Virginia. He was admitted to the bar at Augusta, Georgia, in 1878, and, except two years on the bench of the Supreme Court of Georgia, he spent his professional life here, until he was translated, after a return to the bar for five or six years, to the Supreme Court of the United States.

As a matter of course, we say of him—as we probably would say in a memorial notice of some less distinguished professional brother—that he was an able and successful lawyer and a learned and wise judge; and such brief notice, if duly considered in all its purport, would perhaps be sufficient for the occasion. But it does not satisfy us. Instinctively we feel that the occasion is not an ordinary one and we will not consent to be silent, even though, after all, the final analysis of what we say may be found in the compass of the short sentence we have mentioned.

In speaking of a man like Lamar, it is difficult to confine ourselves to the language of reserve and restraint. Utterly repugnant to us as is fulsome eulogy, always in bad taste, and often grotesque in its inappropriateness, we find rising to our lips on this occasion warmer and more decided language of commendation than we would ordinarily be disposed or even willing to use. For, as we recall the man, his intellect, his

attainments, his high standards, his lofty character, how he wrought in his profession and in his high office, how true he was to civic duty, how delightful he was in social life, how single and open-hearted, how modest and yet how firm for principle, how free from parade and ostentation, from "envy and all uncharitableness"—when we apply to him in all its comprehensiveness the good old phrase "walk and conversation" and note what they were, the picture is so impressive that, though admonished as we are that perfection does not co-exist with human nature, we will not suppress the language of unreserved admiration.

We need not dwell upon his professional career. It is sufficient to say that it embraced four phases: from the start his steady and rapid advance as a lawyer and advocate; his unsolicited appointment to the Supreme Court of the State, and his short, but conspicuously distinguished service there, terminated by his voluntary retirement; an interval of five or six years of peculiarly brilliant and successful practice at the bar; and then the crowning honor again unsought—of a seat on the bench of the greatest earthly tribunal, and services there commensurate with its dignity and on the level of its highest traditions.

Parallel with this professional career was a private and social life which it gives us pleasure to believe was, until the shadow of the last few months fell upon it, equally satisfactory. It is true that even close friends may not know the secret trials of those with whom they are intimate. Very true are the words of an Italian poet:

If every one's internal care
Were written on his brow,
So many would our pity share,
Who wake our envy now.

But to all outward appearance he was a happy, as well as a successful man. Possessed of a beautiful home, blessed with an interesting and devoted family, enriched by loyal and admiring friends, conscious of the respect and esteem of his fellowmen, possessing as his own that store of literary cul-

ture which Cicero speaks of as being the best companion of all stages of life, at all times and in all places, the nutriment of youth, the delight of old age, the ornament of prosperity, the refuge and solace of adversity, enjoyed at home, useful in public, spending the night season with its possessor, accompanying him to his rural retreats and traveling abroad with him—Lamar's bright and open countenance, unclouded by preoccupation, untroubled by anxiety, unfurrowed by care, bespoke the cheerful and serenely happy man.

In the midst of a career apparently so enviable he was stricken down. But in fact, in which there is so much to deplore, there is nothing to surprise. Where there was a duty to perform, on duty alone was his whole being concentrated. If it required work, work only was thought of, and rest and recreation as though they were not. Superb was the equipment, mental and physical, of the man, but it was not without limit. His strength was great, but not the strength of Hercules; it could not, like his sustain the weight of a mountain. And when the congested arteries of the brain, the mere physical elements, gave way, his familiar friends were not surprised. From that time, however, mingled with the hope that his life might be spared, there was the knowledge, very grateful to his friends, that the finer elements, brain and heart, intellect and feeling, were unscathed. Of this they had convincing evidence in messages and letters from his bed of sickness almost down to the day of his departure.

The monument which presumably before long will mark his resting place in the soil of his native State, in the midst of the scenes of his boyhood and young and middle manhood, and about which will bloom flowers planted by the hand of affection, raising its front in sight of onlooking nearby and distant hills, and under a sky that bends over the resting places now and hereafter of many of his neighbors, friends and admirers—on that monument will be recorded the fact that he was taken from a position of great honor and usefulness, when in the order of nature, many more years in that career might have been rationally expected. But he will have other monu-

ments. What he missed of mortal life will be made up to him in the place he will hold in the annals of his country. In this respect the lawyer who goes upon the bench has the advantage of the lawyer who remains at the bar. However brilliant, however successful the latter may be, the things that make him successful are hid away in file cases and buried among the papers of his clients. The things which showed him brilliant are thrown upon the air in great speeches, effective for the occasion and applauded for the moment, but wafted away on the passing breeze. Not so with the judge of a high court, and especially of the highest. His fame is preserved in a multitude of libraries, frequented by countless seekers after knowledge. This enduring monument our departed friend raised for himself in decisions of the Supreme Court of Georgia and of the Supreme Court of the United States. Thus, for long years to come, to hundreds and thousands of lawyers he will be known, in part at least, as we knew him; but to them will be denied the privilege, which was ours, of knowing him in the flesh—not only, as they will know him, as the able, learned, upright judge, but also as the brilliant advocate, the delightful companion, the kind neighbor, the useful citizen, the good man *vir integer vitæ*.

PROCEEDINGS IN
THE SUPREME COURT OF GEORGIA
IN MEMORY OF
JOSEPH RUCKER LAMAR.

Saturday, May 20, 1916.

The Honorable Supreme Court met pursuant to adjournment. Present, all of the Justices.

The Committee appointed to prepare a memorial commemorative of the life and character of Honorable Joseph Rucker Lamar, late Associate Justice of the Supreme Court of the United States and formerly an Associate Justice of the Supreme Court of Georgia, submitted through its Chairman, Major J. C. C. Black, the following report:

IN MEMORIAM.

Joseph Rucker Lamar was born at Ruckersville, in Elbert County, Georgia, on October 14th, 1857, and died in the City of Washington, D. C., on the 2d day of January, 1916. Born — Died. These two events come in every life, but life is not measured by the intervening years. The final estimate cannot be made until the close and then must depend not upon years but deeds, not upon how long one lives but how much he lived. Measured by this standard, his life was full and rich.

He was a descendant of Thomas Lamar, a Huguenot, who settled in Maryland in 1663. His ancestors moved to Georgia in 1755 and have acted a prominent part in the public life of the State and country. He was the son of James S. Lamar and Mary Rucker Lamar. His father was a distinguished minister of the Christian Church and for many years pastor of that church in the City of Augusta. He attended school at the Martin Institute at Jefferson, Georgia, and the Richmond Academy at Augusta, Georgia, Penn Lucy School near Baltimore, and matriculated at the University of Georgia in

1874, but before graduating there entered Bethany College, West Virginia, in which he taught for one term and from which he was graduated in 1877. He attended the Law School of Washington and Lee University and was admitted to the bar in Augusta on April 16th, 1878.

On the 30th of January, 1879, he married Miss Clarinda King Pendleton, the daughter of Dr. William K. Pendleton and Catherine Huntington King, a daughter of Judge Leicester King of Warren, Ohio. Her father was President of Bethany College until his resignation in 1885, and afterwards President Emeritus until his death in 1899. No better fortune ever came to him than this marriage. It was a life of congenial companionship, mutual admiration, esteem and love. Her fine literary tastes and her liberal culture fitted her for the best social and official circles. As wife and mother she filled the highest offices of her sex and was a blessing to their home.

From 1886 to 1889 he represented Richmond County in the Georgia Legislature. He was the author of the Eminent Domain Act, the Auditors Act, and the Assignment Act. He was appointed to fill the unexpired term of Justice Little on the bench of the Supreme Court of Georgia, on January 13th, 1903, was elected to that office in 1904, and resigned in 1905, when he resumed the practice of law at Augusta. He wrote more than two hundred opinions, embraced in six volumes of the Georgia Reports. He was appointed by President Taft to the Supreme Court of the United States on December 12th, 1910, was confirmed within three days thereafter, and took the oath of office on January 3d, 1911. His appointment was hailed with universal and supreme satisfaction and approval by the bench and bar of Georgia, and his fellow-citizens generally.

He was at once recognized by his associates as eminently qualified to sit with them in that highest of judicial tribunals, fulfilled the high expectation of the profession, and vindicated the wisdom of his appointment. It may be said of him, as was said of another distinguished Justice of that court, that "when

the ermine fell upon his shoulders it touched nothing less spotless than itself." As was aptly said by Dr. Hadley, President of Yale University, in conferring upon him the degree of LL.D. in 1911, the honor conferred by his selection for this exalted station was emphasized by the fact that the President who appointed him is himself a great jurist who had more than once been invited to a seat in that court, and who ignored party lines in the appointment.

In the beginning of his career in this court he was called on to pass upon the Standard Oil case and the Tobacco Trust Company case. His opinions as a judge were brief but comprehensive and displayed a thorough knowledge of the law involved, expressed with clearness and force.

He was appointed by President Wilson as a member of what is known as the A. B. C. Conference, growing out of the situation with Mexico. It was a very high honor that out of all the jurists, statesmen and diplomats of the country, he should have been one of the two selected for this place. The place called for a very high order of ability, for tact, for wisdom, for that self-control that could listen when silence was called for and speak when something must be said and rightly said. An excess of temper or an inapt or ambiguous speech might have defeated the purpose of the conference. Its record in detail has not been made public but it may be said that it resulted in a better feeling between the United States and the countries of South America, and while we cannot now fully see the importance of what it accomplished, we must recognize it as a great public service.

The high honors he enjoyed came to him unsought. Using a much-misused word and without flattery, which he never used of others, and of himself would not receive with favor, which is an offense alike to good morals and good taste, we call him a *great* jurist, a *great* judge, and a *great* man.

His knowledge of law was encyclopedic. He understood its philosophy and was permeated by its spirit. He was versed in its general principles and familiar with the technicalities of pleading and practice. It cannot be truly said of any man that

he knows it all, but it may be said of him that he had unusual knowledge of every branch of law, English and American, its history, growth, and development, whether contained in the common law, in statutes or constitutions or judicial decisions. His investigations were exhaustive. As a counselor he was wise. In argument he employed the force of the best logic and the attraction of the most lucid and felicitous expression.

He had a just conception of the dignity and importance of the legal profession, of the qualifications necessary to constitute one a worthy member, a keen sense of the duties and responsibilities it imposed, and never lowered the standard required by the highest ideals. In answer to an inquiry by President Taft, asking for an opinion as to his qualifications as a lawyer for Supreme Court Justice, the Honorable Joseph B. Cumming, eminently qualified by intimate acquaintance and otherwise, answered:

"In the symmetry of Lamar's makeup I don't know which most to commend, the man or the lawyer. In the latter aspect, as far as I can judge, his present learning is vast and his facility for acquiring more, remarkable. He digs deep, is closely logical but at the same time intellectually candid and broad-minded and with a great gift for clear and forcible exposition of his views. If I were called on to construct a model for a judge, I would take Lamar as he is, only chipping off somewhat of his too painstaking search for finality of truth, which sometimes keeps him reaching out beyond the sea mark, where other excellent judges would be willing to drop anchor. This characteristic, however, increases the burden but lessens not the excellence of his work."

How great is the office of the judge and the honor of him who worthily fills it. There is nothing beyond it. It is the *ne plus ultra* of the loftiest ambition. What dignity, what majesty, what solemnity invests it. It speaks with the voice of supreme authority. It is clothed with the power to deal with property, with reputation, with liberty. It may pronounce the sentence which deprives of that which God only

can give. To pronounce final judgment from which there is no appeal is a divine prerogative.

His historic and literary contributions to the profession may be found in the Reports of the Georgia Bar Association of 1892, 1898, 1900, 1907, 1908, 1913, and embrace the following subjects: "Georgia's Contribution to Law Reform," "Georgia Law Books," "A Century's Progress in Law," "History of the Establishment of the Supreme Court of Georgia," "Memorial of Chief Justice Logan E. Bleckley," and "The Bench and Bar of Georgia During the Eighteenth Century," which he began with the query, "Who was the first lawyer in Georgia?" and with characteristic tenacity of purpose pursued it until he found not only the first lawyer, but the first judge and the first jury.

His work in the preparation of these papers and addresses, involving as it did the careful examination of the earliest records at home, including the voluminous Colonial and Revolutionary records of Georgia compiled by Governor Candler, which he read through and upon which he made marginal notes, and the obtaining of some from abroad, is a monument of his passionate devotion to the earliest history of Georgia. The historical knowledge furnished is of incalculable value to the present and future generations, *and the honor due him for these treasures is increased by the fact that they were given without any thought of pecuniary reward, but from love of his State and profession.*

These papers and addresses relating to Georgia law are eminently worthy of a place in the curriculum of every law school in the State, and the State Library and would justify the necessary expenditure for that purpose.

His address before the Alabama State Bar Association on July 4, 1910, was a splendid tribute to the "Work and Position of American Courts." In this address he informs us what it would be well to recall in this day when it has been assailed, that the power to pass upon the validity of laws was involved, if not expressly conferred by the provision of *Magna Charta*, "that if anything be procured by any person contrary to the

premises, the same shall be null and void." Splendidly reviewing the work of American courts, he was inspired by the feeling "that we are a part of a great system which is disseminating its benign influence to the isles of the sea and the uttermost parts of the earth"; and looking down the vista of the future he was thrilled by a vision of the day when our courts should take part in a case and announce some vital principle that would be cited and followed around the globe.

One of his greatest addresses was before the Ladies' Memorial Association of Athens, Georgia, on April 26th, 1902, on "The Private Soldier of the Confederacy." In all that has been spoken and written there cannot be found a more splendid tribute. He speaks of "The War without adjective, without word of explanation." He graphically portrays the South's unpreparedness for war; recalls that the combined losses of the English, Prussian and French armies at Waterloo did not exceed the losses at Gettysburg; that the casualties at Sadowa fought between the Austrians and Prussians, where a quarter of a million men were engaged on each side, each army greater than the combined forces of the Federals and Confederates at Gettysburg, were much less, as they were also at Sedan. He detracts nothing from the honor due those who commanded, but he gives highest honor to the courage and endurance of the private soldier, whom he calls the hero of the Confederacy. It was a statesmanlike discussion of the causes that led to the war, and a patriotic warning against the dangers which it left in its path. It was loyal to Southern sentiment and pride, but without a note of sectional animosity. The greatness of this address can be better appreciated by recalling that its author, who with such familiarity and philosophy discusses the causes, the progress, the achievements, and the results, with the knowledge of an intelligent participant, was not born when these causes began, and was only five years old when they culminated in that struggle, which he calls the overshadowing event in our history.

It was heard by a number of distinguished men from every section of the country, members of an educational convention

in session at the time and the editor of the "Brooklyn Eagle" asked for the privilege of publishing it for general distribution. This was done, with an introduction, by Dr. Shaw, editor of the "Review of Reviews."

He was one of the three citizens, learned in the law, selected by the Governor, the Chief Justice and Associate Justices of the Supreme Court of the State, to prepare the Code of 1895, and if he had done nothing else, this alone would stand as a perpetual monument commemorating eminent public service.

His learning was far beyond the domain of the law. It embraced the classic, the historic, the scientific. He was a scholar without pedantry, a genius without eccentricity. His makeup was such a combination of strength and simplicity, of merit and modesty, of public and private virtue, of intellectual ability and nobility of character, as made him a great man.

He lived the best of all lives, a life of service—the service that has that divine attribute of forgetfulness of self and thought of others.

He was an humble, consistent Christian. His knowledge of the Scriptures was vast and accurate and for many years was employed in teaching a Bible class in the church of which he was a loyal member. He was not driven about by strange and divers doctrines, but stood steadfastly by the old landmarks.

He lived much because he loved much. He loved the beautiful in nature and art; he loved birds and trees and flowers; he loved his fellows.

"I pray thee, then,
Write me as one who loves his fellow-men."

"The angel wrote and vanished. The next night
It came again, with a great wakening light,
And showed the names whom love of God had blest;
And, lo! Ben Adhem's name led all the rest."

He loved his friends. His elevation to the highest station never spoiled him. Its altitude never chilled the warmth and glow of his friendships, nor cooled the cordiality of his manner to the humblest acquaintance.

He loved his native State, her history, her traditions, her people. In the warp and woof of his being he was a Georgian. His legal domicile may have been in Washington City, but in spirit he had never removed from Georgia and Augusta. He loved his country, her system of government, her contributions to human liberty and to the progress and civilization of the world. He was through and through an American.

Pursuant to his expressed desire, he was laid to rest with simple funeral ceremony, attended by the presence of Mr. Justice Pitney, Mr. Justice Van Devanter and Mr. Justice McReynolds, and the Marshal of the Supreme Court of the United States, representatives from the local and State Bar Associations, and a concourse of friends and fellow-citizens whose admiration and esteem he had so richly merited and enjoyed.

His body lies buried in the city he loved with such passionate devotion, and to whose interests—social, educational, religious, and commercial—he had generously contributed with heart, and mind, and pulse, but he lives and will live. The highest tribute we can offer is worth more to us than to him. He needs it not. He has written his own eulogy more eloquent than any words of ours can pronounce. He has builded his own monument in strength and symmetry more enduring than marble or granite, and more beautiful than was ever conceived by the mind of genius, or chiseled by the deft hand of sculptor.

He may not hear what we say of him. Let us listen to what he says to us. He speaks in a voice solemn with the emphasis of another world. It says to his family in the first item of his last will and testament: "My friendships, many and precious, I leave to my family in the hope that they will be cherished and continued. I know of no enmities but if such hereafter unhappily arise, let them be forgotten."

It says to his friends, "Say not good-night, but in some brighter clime bid me good-morning."

It says to us, Honor and dignify your profession. Cherish

the memory and imitate the example of the great and good men who have gone before you. Love truth; love justice; uphold constituted authority. Remember you are sworn officers of the law and it should be your supreme pleasure, as it is your sacred duty, to oppose wrong, to defend the right, and to terminate contentions. Do not forget that you are anointed priests of service in a temple whose altars should be kept undefiled, and whose ministers should be clean.

Let us answer this voice, though our words are a poor expression of what our hearts feel: Great jurist, great judge, great man, thou hast done well. Thou hast shed luster upon thy state and country. Thou hast been a worthy exemplar of faithful, intelligent service in the highest stations and adorned every private relation in life, and into this high tribunal, enriched and adorned by thy character and services, this high tribunal, the last and surest defender of the right to life, liberty and property, we come mourning thy death, but rejoicing in thy life, and crown thee with our undying gratitude, admiration and esteem.

J. C. C. BLACK
SPENCER R. ATKINSON
WM. A. LITTLE
ANDREW J. COBB
JOHN S. CANDLER
SAMUEL B. ADAMS
A. L. MILLER
P. W. MELDRIM

HORACE M. HOLDEN
J. R. POTTLE
JOEL BRANHAM
E. H. CALLAWAY
A. R. LAWTON
ALEX. C. KING
S. H. SIBLEY
SAM S. BENNET

HENRY R. GOETCHIUS

Response for the Court was made by Associate Justice Joseph Henry Lumpkin as follows:

When the news was flashed over the telegraph wires that Justice Joseph R. Lamar was dead, there was sorrow in many homes and in many hearts. The sense of loss was not confined to a locality or a class. The Supreme Court of the United States felt the loss of an able and valued member. The bar realized keenly that one of its brightest ornaments

had passed away. The people knew that a man whom they loved and trusted was no more. The note of sorrow which the news of his death awoke, found full response in the Supreme Court of Georgia. The personal friend of every Justice of this Court, and himself a former member of it, the sorrow at his passing was poignant and profound. He left us while still in the strength of mature manhood.

It so happened that when Justice Lamar resigned from this bench in 1905, I was appointed to succeed him. And thus one who first met him in his college days, who in the years since then has esteemed him as a friend, and who became his successor here, now comes on behalf of this Court to respond to the memorial report of the committee, and to pay a last tribute to his memory.

His ability, learning and industry, his literary attainments and his achievements, have been so fully set forth in the report of the committee that nothing need be added as to them. Only two or three things would I mention. His stainless character, both personal and professional, and his high ideals as a lawyer, were of great value to a profession in which, for the public weal, even more than in any other secular vocation, honor and integrity are indispensable, that its members may be worthy of the confidence of the public, and may be upholders of law, preservers of justice, and champions of right. Fidelity to duty is nobler than fees.

Another striking quality of his was his broad human love and sympathy. He loved his fellow-men, and they loved him. He was thoughtful of others; and though absent from Georgia during much of the time since his appointment to membership in the Supreme Court of the United States, the chain of his friendships was not broken. As an illustration of this, he had long been interested in gathering together certain rare law books. Some years before his death he made a will in which he requested that certain acts of the legislature which might not be easily obtained elsewhere should be given to the library. Several years later, having added other acts to the list, he wrote to the Justices of the Supreme Court that he

had procured a line of the Georgia laws from 1732 to 1899, and tendered them, with certain digests, to the Supreme Court of Georgia on condition that these books should be kept in its library. The gift was gladly accepted, and by direction of the Court a suitable bookcase was obtained and the books were placed in the Supreme Court library, where they will be kept as a perpetual memorial of Justice Lamar. Thus his generosity would not wait for the end of life to become effective.

It was characteristic of him that he desired that the ceremonies at his funeral should be simple and unostentatious; and it was fitting that, as all that was mortal of him was consigned to his last earthly resting place, there fell upon the listening ears of gathered friends those words of confidence and hope which he loved:

“Twilight and evening bell,
And after that the dark!
And may there be no sadness of farewell,
When I embark.

For though from out our bourne of Time and Place
The flood may bear me far,
I hope to see my Pilot face to face
When I have crossed the bar.”

When his life-work was ended, his eyelids closed in death, “calmly as to a night’s repose, like flowers at set of sun.” We miss the touch of the “vanished hand” and the sound of the “voice that is still.” But we feel sure that to him the last long sleep is sweet.

“Of all the thoughts of God that are
Borne inward unto souls afar,
Along the Psalmist’s music deep,
Now tell me if that any is,
For gift or grace, surpassing this,—
‘He giveth his beloved sleep?’”

To be firm without obstinacy, kind without weakness, forceful without tyranny, friendly without loss of self-respect, and self-sacrificing without sacrificing principle,—this is a man’s task; and this our friend achieved.

So may it be with each of us. And as life’s day shall wane,

and shadows lengthen from the west, may memory hold no bitter dregs; may kindness and friendship endure beyond the midday conflict; and may the evening's twilight find us gentle still.

Let these proceedings be entered on the minutes and be published in the official reports. Let a certified copy of them be furnished to his family.

As a further mark of respect to the memory of the deceased, the court adjourned.

PROCEEDINGS OF
THE BAR OF THE SUPREME COURT
OF THE UNITED STATES
IN MEMORY OF
JOSEPH RUCKER LAMAR.

City of Washington, May 27th, 1916.

The Bar of the Supreme Court of the United States and the officers of the Court met in the Court Room in the Capitol at 12 o'clock.

On motion of Mr. Solicitor-General Davis, Hon. Hoke Smith was elected Chairman and Mr. James D. Maher was elected Secretary.

On taking the Chair, Senator Smith said:

We meet to-day as members of the Bar of the Supreme Court to pay tribute to the memory of Mr. Justice Lamar. He took his seat on this bench January 3, 1911. The sickness which stopped his work began in the summer of 1915. In this short period he fixed his place among the great Justices of this Court.

Those of us who practiced law with him in his native State, and before him while he was a Justice of the Supreme Court of Georgia, were not surprised at the ease with which he won the confidence and admiration of the Bar of the Nation.

Joseph Rucker Lamar was born in Elbert County, Georgia. His parents were Mary Rucker, daughter of a successful planter and banker, and James S. Lamar, a Minister of the Gospel.

He was educated in the best schools and at the University of Georgia. Sickness, and the removal of his father to Louisville, Kentucky, to take charge of a church there, forced him to leave the University before graduation. He subsequently graduated from Bethany College, West Virginia. He studied

law at Washington and Lee University, and was admitted to the Bar at Augusta, Georgia, in April, 1878.

Possessed of a bright, logical mind, a retentive memory, and a thirst for knowledge, he applied himself with intense zeal to the study of law. He made rapid progress in his profession, and soon became one of the leaders of a Bar of unusual ability.

While his life was devoted to the Bar and the Bench, his culture was broad, and he did not fail to meet the highest responsibilities of a citizen. He took active interest in every movement to serve his fellowmen. He found time to teach a Bible Class in his father's church, and gave to the class his rich knowledge of the Scriptures and his general learning.

Responding to the call of his fellow citizens, he served two terms in the Georgia Legislature from 1886 to 1889. Many gifted men were his colleagues, but all gave him first place as a profound lawyer.

He was the author of several important acts of judicial reform, and was subsequently selected as one of the three commissioners to codify the laws of Georgia. While engaged in this service he prepared several other important acts simplifying judicial procedure.

In the division of the work of the commission, revision of the civil code was assigned to Mr. Lamar. The scheme of the original code embodied the statutes of the State, and common law principles, in sections clearly and briefly expressed. Mr. Lamar completed the code to date, adding, according to the original scheme, all material furnished by decisions of the Supreme Court. The manner in which he did this work classes him as one of the most capable of civil code authors.

He was appointed in January, 1903, a Justice of the State Supreme Court. His talents and his temperament peculiarly fitted him for the bench. He loved judicial labor. While upon the Supreme Court Bench of Georgia I heard him say that he was almost afraid to admit how much he enjoyed the work. In two years he wrote more than two hundred opinions. The reader of his opinions cannot fail to be impressed with

the learning of the writer, and with the clear and striking form or expression, carrying satisfactory and convincing reasoning.

His conscientious devotion to the duties of the office taxed his health, and by advice of his physician, he resigned in April, 1905. Speaking of his resignation, his learned associate upon the bench, Judge Andrew Cobb, wrote:

"His retirement from the bench of the State Supreme Court was the occasion of the greatest regret on the part of his associates, who had been so much aided by his presence among them, and called forth expressions of the sincerest regret from members of the Bar."

Immediately upon his resignation Judge Lamar returned to the active practice of law at Augusta, Georgia.

As a practitioner at the Bar, Mr. Lamar had few equals. He was always thoroughly prepared, the entire master of the case in hand. Whether discussing law or facts, before court or jury, he was clear, brilliant, logical and convincing. When you opposed him, you felt his power, but appreciated his courtesy and perfect fairness. When associated with him, there was a sense of relief. You could be certain that his part of the trial would be splendidly sustained, with never the possibility of blunder.

Justice Lamar was a man of great determination and perfect courage, but he was so gentle and unselfish that all who knew him loved him. In this he was not different from his great kinsman, L. Q. C. Lamar. I once heard President Cleveland compare John G. Carlisle and L. Q. C. Lamar. He paid tribute to the great ability of each, and then said, "but I *loved* Lucius Lamar."

President Taft, just after his election, spent part of the winter at Augusta. He was frequently thrown with Mr. Lamar.

Fairly acquainted with President Taft from his decisions as Circuit Court Judge, believing that a great judge would recognize the judicial qualifications of another, and knowing Judge Lamar, I that early ventured the opinion that, if a

vacancy occurred upon the Supreme Court to which the President could appoint a Southern Democrat, he would name Joe Lamar.

In answer to an inquiry by President Taft asking for an opinion as to his qualifications for Justice of the Supreme Court, the Hon. Joseph B. Cumming, fitted by intimate acquaintance and otherwise to give opinion, answered:

"In the symmetry of Lamar's makeup I do not know which most to commend, the man or the lawyer. His present learning is vast; his facility for acquiring more, remarkable. If I were called upon to construct a model for a judge, I would take Lamar as he is, only chipping off somewhat of his too painstaking search for finality of truth, which sometimes keeps him reaching out beyond the sea mark, where other excellent judges would be willing to drop anchor."

The Constitution of the United States is the greatest political legacy ever given to a people. Mr. Justice Lamar was devoted to the Constitution, and to all the institutions of his country.

He was fifty-four years of age when he began his work here. To him it was the ideal service, and to us he was the ideal judge.

"When the ermine fell upon his shoulders it touched nothing less spotless than itself."

"How great is the office of judge, and the honor of him who worthily fills it. There is nothing beyond it."

We honor his memory, and mourn that he was not permitted to serve the allotted period of three score years and ten.

In the language of the Bar of his own State, we can truthfully say of him:

"Great jurist, great judge, great man, thou hast done well."

On motion of Mr. W. G. Brantley, the Chair appointed a Committee on Resolutions:

COMMITTEE ON RESOLUTIONS.

Mr. WM. G. BRANTLEY, Chairman.

Mr. THOMAS W. HARDWICK.

Mr. JOHN W. DAVIS.

Mr. NATHANIEL WILSON.

Mr. FREDERICK W. LEHMANN.

Mr. FREDERIC D. MCKENNEY.

Mr. HANNIS TAYLOR.

Mr. ALFRED P. THOM.

Mr. HENRY E. DAVIS.

Mr. S. S. GREGORY.

Mr. Wm. G. Brantley, for the Committee, presented the following:

RESOLUTIONS.

Resolved, That the members of the Bar of the Supreme Court of the United States lament the untimely death of the late Joseph Rucker Lamar, Associate Justice of the Supreme Court of the United States, and record their appreciation of his learning, ability and high character, the affectionate regard with which they now cherish his memory, and the great loss to the Bench and the Country occasioned by his death.

A native Georgian, he was born of an illustrious family, and by his life's work not only sustained the best traditions thereof but added lustre to the great name he bore. He was the second of the Georgia Lamars to win a place on the Bench of the Supreme Court of the United States, the first being the late L. Q. C. Lamar, appointed from the State of Mississippi. Each of these two Lamars brought to the Court superb mental equipment, lofty ideals, intense Americanism and consecration to duty, and by the product of his labors more than vindicated the wisdom of his appointment.

Joseph Rucker Lamar was born October 14th, 1857, and after a collegiate education came to the Bar at twenty-one years of age. His entire life thereafter was one of devotion to the law, for he never knew any other field of labor.

As a practitioner at the Bar he won renown and success, and, at a comparatively early age, easily ranked among the leaders of the Bar of his State. As an antagonist he was always formidable, for he was always prepared, but he was also always delightful. His courtesy was disarming. He was always fair, and neither sought nor would he have any mean advantage.

In 1892 he was chosen as one of three Commissioners to codify the laws of his State and the work he there did, resulting in the Code of 1895, will ever stand as a monument to his discriminating judgment, to his industry, and to the thoroughness and completeness with which he performed each task assigned to him.

Prior to this work of codification he served for two terms as a member of the Lower House of the General Assembly of Georgia, and to the legislative field he carried the training and habits of the lawyer, giving to his State, upon all public questions, the careful preparation, the thoughtful consideration, the sound advice and unswerving loyalty of attorney to client. He was always earnest, always sincere and never knew but one way to discharge any duty, and that way was to discharge it to the very best of his ability.

On January 13th, 1903, he took his seat as an Associate Justice of the Supreme Court of the State of Georgia, and resigned therefrom in 1905 on account of his health and resumed the practice of law.

The fruits of this service were found in the affection and admiration for him of his Associates on the Bench, and of the Bar of the State, and in strong virile opinions, classically expressed, which to-day, as then, enrich the permanent judicial literature of his State.

On December 12th, 1910, he was appointed an Associate Justice of the Supreme Court of the United States. His appointment was shortly thereafter confirmed by the Senate and on January 3rd, 1911, he took his seat on the Bench. He died at his home in the City of Washington on January 2nd, 1916, not quite completing five years of service.

From the day upon which he entered this service he consecrated his life and all that was in him to the faithful performance of its duties. His application, his untiring research, his painstaking care and his patient labor were known to all who had dealings with the Court.

Others have been and no doubt will be permitted to give more years of service to their country on this great bench than was he, but to him was given the high privilege, by excessive and never-ending toil, to give his life. No man could give more.

Measured by time, his service was not long, but measured by results, a great service was completed. He served long enough to demonstrate his aptitude and fitness for the work, and long enough to leave upon the archives of his country the enduring impress of a great and just judge.

His life was one of devotion to American ideals. He was ever a student of his country's history, and no man was more familiar than he with the origin of the government under which he lived or with the foundation principles upon which it rests. The extent and the limitations of its power were clearly defined in his mind and full well he knew how liberty came, and how, only, it can be preserved.

To the office of Associate Justice of the Supreme Court of the United States he brought the ability, the strength, the courage and the patriotism to preserve our Republic as the Fathers founded it, and all these he dedicated to that great end.

In May, 1914, he was invited by the President to serve as a Special Commissioner of the President, in connection with Commissioners from certain South American Countries, in the matter of mediation in the troubled affairs of our neighboring Republic of Mexico. With his habitual response to every call of duty he accepted the invitation and assumed the responsibilities thereby imposed. The Commissioners so selected met with Commissioners from Mexico at Niagara Falls soon after their appointment, and concluded their deli-

cate and important labors in the month of July following, to the satisfaction of the several Governments participating.

He was by nature kind and gentle, but beneath his kindness of manner there was a fixedness of purpose and a courage of steel that knew no yielding. He was cautious and careful, but once the path of duty became clear he followed it to the end. He never faltered in the pursuit of truth.

The sweetness and gentleness of his nature, the charm of his personality, the readiness of his sympathy were such that to know him was to love him. The same listening ear that as Judge he gave to advocate, he always kept attuned to hear the voice of humanity. He loved his fellows, and to him the breath of friendship was as incense. It sweetened, inspired and strengthened his life.

In the rich fullness of his sympathetic heart, when he came to prepare his last Will and Testament, in 1899, he incorporated therein the following beautiful statement:

"My friendships many and precious I leave to my family in the hope that they will be cherished and continued. I know of no enmities; but if such unhappily hereafter arise, let them be forgotten."

When the end came for him it is precious to believe that there was still an absence of all enmities, and that he went out into the Great Beyond, leaving behind him a world of friends only. What more priceless heritage could he have bequeathed!

Resolved, That the Attorney-General be asked to present these Resolutions to the Court with the request that they be entered upon the records, and that the Chairman of this meeting be directed to forward a copy of them to the family of the late Justice Lamar, accompanied by an expression of our profound sympathy for them in their overwhelming bereavement.

REMARKS OF MR. WM. G. BRANTLEY.

Mr. Chairman: It was my privilege to know Justice Lamar long and intimately. He possessed my respect, my admira-

tion, and my affection. I first knew him when we served together as members of the Georgia Legislature, and it was there that I came to know the wonderful clearness of his perception, the power of his logic, the varied character of his information, and the thoroughness and conscientiousness with which he did his work; and also came to know the cleanliness of his life and the gentleness of his nature.

I had the opportunity to bear testimony to his worth to President Taft prior to his appointment to this great Court. On that occasion, President Taft said to me that in filling the vacancies then existing on the Bench of the Supreme Court it was his desire to find men who were big enough, courageous enough, able enough, and patriotic enough, to preserve this republic as it was founded, and it mattered not to him from what section of our common country they came, nor what their politics were. I was proud to give my assurance that Mr. Lamar measured up to these great qualifications, and I am happy now to believe that this assurance was more than vindicated by the record of Justice Lamar in the discharge of his judicial duties.

Mr. Chairman, the purity of the life that Justice Lamar lived, and the deeds he wrought, known to us all, speak their own eloquent eulogy of the man and his life, and there are no words of mine that can add anything thereto. I can only bear testimony to the strength of my devotion to him and declare my high estimate of him as man, as lawyer, and as judge, and the great sorrow into which we were all plunged when he was taken from us. I move the adoption of the Resolutions submitted.

REMARKS OF MR. E. MARVIN UNDERWOOD.

Mr. Chairman: We of the State of Georgia were glad and proud when the great ability and sterling character of our compatriot, the late Justice Lamar, were recognized and rewarded by his elevation to the Bench of the Supreme Court of the United States.

We were happier still to see our faith justified in his

splendid work, evidenced from the beginning by the clear and learned opinions he wrote while a member of this Court, and we noted with greatest satisfaction the progressive development of his powers.

We now mourn his untimely death at the very zenith of his powers and usefulness, and sadly realize that our country has lost one of her ablest and most faithful servants and humanity one of its choicest spirits.

We who knew him, already, have been taught by his absence how much we shall miss his cordial and loving nature and the delightful charm of personal communion with him. Like all of his friends, I cherish his memory as a personal blessing.

As a citizen of the State which gave him birth and which he honored and served so well, I pay tribute to his memory.

REMARKS OF MR. HANNIS TAYLOR.

Mr. Chairman: In his tender and noble-minded essay on Friendship Cicero has said: "What can be more delightful than to be near to one to whom you may speak on all subjects just as to yourself. Where would be the great enjoyment in prosperity, if you had not one to rejoice in it equally with yourself? And adversity would indeed be difficult to endure without some one who would bear it even with greater regret than yourself. In short, all other objects that are sought after, are severally suited to some one single purpose: riches, that you may spend them; power, that you may be courted; honors, that you may be extolled; pleasures, that you may enjoy them; good health, that you may be exempt from harm, and perform the functions of the body. Whereas friendship comprises the greatest number of objects possible; wherever you turn it is at hand; shut out of no place, never out of season, never irksome; and therefore we do not use fire and water, as they say, on more occasions than we do friendship. And I am not now speaking of commonplace or ordinary friendship (though even that brings delight and benefit), but of real and true friendship, such as belonged to those of whom very few

are recorded; for prosperity, friendship renders more brilliant; and adversity more supportable, by dividing and communicating it."

I have borrowed these reflections on friendship, Mr. Chairman, from one of the greatest masters of human emotions, because Mr. Justice Lamar possessed in a very eminent degree what may be called, without exaggeration, a genius for friendship. It was a part of his religion; it was a part of his life. To such an extent was that true that when the time came for him to execute his last will and testament he described his friendships as the most precious of his possessions. In his will he said, with touching pathos—"I bequeath my friendships to my children." I cannot claim to have been within the charmed circle of the dead Justice's friendships. And yet a very cordial acquaintance was fast ripening into friendship when the pale messenger came with his inverted torch and beckoned him away. As our homes were not far apart it was my habit, during the last few years of his life, to visit him at stated intervals and to commune with him upon all the problems now pressing upon us. In that way I was able to make a rough inventory of his thoughts and feelings; in a word to understand his estimates of the duties and responsibilities of life.

No member of this Court was ever more impressed than Justice Lamar with its august dignity and its national and international importance. He realized the fact that he had been called to a great magistracy, and the single ambition of his life was to discharge its duties worthily. A ripe culture and a long and active experience at the Bar had well equipped him for his task. And so, surrounded in his home with an ample and well-selected library, he wrought for five years in laying the foundations of a reputation as a judge which will be permanent. Those of you who are familiar with his decisions fully appreciate not only their depth and breadth but the finished elegance and lucidity of the language in which they were expressed. Through them all there is a clear-mindedness which never missed the real point at issue; through them all there is an honesty of purpose which never

stooped to shallow sophistries as a means of forcing a conclusion. To his judicial style we may well apply the Horatian epigram—*Simplex atque rotundus*.

There is only one kind of sectionalism of which I approve. I refer to that commendable spirit of generous rivalry which prompts each grand division of our common country to send to this capital as its representatives its best and wisest men. In that way each section makes for itself a place in our invisible hall of fame. As a Southern man I confess that I feel a special pride in the remarkable contributions my section has made to the personnel of this great Court. Of its nine Chief Justices, four have been contributed by the South: Rutledge, Marshall, Taney and White. Of its sixty Associate Justices, twenty have been contributed by the South: Harrison of Maryland, Blair of Virginia, Iredell of North Carolina, Chase of Maryland, Washington of Virginia, Moore of North Carolina, Johnson of South Carolina, Todd of Virginia, Duvall of Maryland, Trimble of Virginia, Wayne of Georgia, Barbour of Virginia, Catron of Tennessee, McKinley of Alabama, Daniel of Virginia, Campbell of Alabama, L. Q. C. Lamar of Mississippi, Jackson of Tennessee, Lurton of Tennessee and Joseph Rucker Lamar of Georgia. Only the families of Field and Lamar have enjoyed the distinction of contributing two members each to the staff of this Court.

In a proud yet stricken spirit the South views these obsequies of her distinguished son, because she feels that her last contribution to the staff of this Court was in every way a worthy one. Within the brief time allotted to him Joseph Rucker Lamar achieved as much as the most ambitious and exacting mother could have expected of him. He was adequate in all things. I shall therefore close this humble tribute as I began it, with a quotation from the famous essay on Friendship, in which Cicero epitomized, twenty centuries ago, the life and character of Justice Lamar as I understand it. In speaking of his lost and cherished friend Scipio, the great word-painter said:

"What shall I say of his most engaging manners; of his dutiful conduct to his mother; his generosity to his sisters; his kindness to his friends; his uprightness toward all. These are known to you; and how dear he was to the state, was displayed by her mourning at his death. How, therefore, could the accession of a few years have benefited such a man? For although old age is not burdensome (as I recollect Cato asserted, in conversation with myself and Scipio the year before he died), yet it takes away that freshness which Scipio even then possessed. Wherefore his life was such that nothing could be added to it, either in respect of good fortune or of glory: moreover, the very suddenness of his death took away the consciousness of it."

Vivit tamen semperque vivet; virtutem enim amari illius viri quae extincta non est. De Amicitia, XXVII.

He lives and shall forever live; for it was his virtues that endeared him to me, and they can never die.

REMARKS OF MR. FRANK WARREN HACKETT.

We of the Bar have listened with sympathetic ear to what has been said of our friend, Mr. Justice Lamar, by lawyers from Georgia and Alabama. Perhaps it is now appropriate that, coming as I do, from New Hampshire, I add a word of tribute to his memory. I am the further encouraged, Mr. Chairman, because of the felicitous relation you yourself bear to the State of New Hampshire.

Sometimes I have wondered whether the public, who are not lawyers, or familiar with the traditions of our profession, understand what these bar-meetings mean. I fear that there may be those who imagine that what is said is perfunctory, and that the custom is followed only because it has been long established. That is far from the truth. I can myself certify, from forty-three years' experience as a member of the Bar of this Court, how genuine and heartfelt are the expressions that on these occasions come from the Bar, in testimony of the worth of a deceased Justice.

I recall the circumstance of my being present, at the meeting held in 1873, in memory of Chief Justice Chase; and I

believe that I can say that since that time I have attended nearly every one of the bar-meetings held in this room. Well do I remember the proceedings that took place upon the death of Matt Carpenter, when Judge Black, speaking from where I now stand, closed his remarks with the exclamation, "I did love the man." We were overcome with emotion at hearing those simple words.

I wish I had time, but there is no time, to go a little into an expression of the meaning and the value of these meetings. They furnish the only opportunity that the Bar has to testify to the merits of a Judge whom they have learned to esteem, and to regard as a friend. These occasions have their value, because they bring to light, as it were, and emphasize the relation that exists between Bench and Bar. Unless that relation be cordial, unless the two have confidence, each in the other, the cause of justice is not subserved as it should be. There is a pride on the part of the Bar in the conviction that we not only trust each other, as we do implicitly in our business, but that we trust the judge, and the judge trusts us. This feeling of the existence of a genuine and complete confidence helps measurably in the administration of justice.

But I must hasten to say a word in regard to the personality of Mr. Justice Lamar. It was not my privilege to know him any further than by way of a passing acquaintance. Let me confess, however, that the first time I saw him on this Bench I was captivated by his countenance. I do not recall another instance of, at first sight, becoming wholly conquered by the looks of a man, as in the case of Mr. Justice Lamar. It may be sentimental to say it, but it seemed to me that there was in his face an aspect of dignity, of gentleness, and of happiness—and yet no lack of vigor or firmness. That I feel sure, sums up the best qualities a judge can possess. The thought came into mind—here is one who will listen to you kindly and considerately, and then decide justly.

Trivial though this circumstance may be, I deem it not unworthy of being mentioned, in order that it may go upon

record; for in years to come the Bar will be grateful to learn, be it never so little, of the personal characteristics of any Justice of this Court.

We have already heard with what signal ability Mr. Justice Lamar served as a member of the highest court, in his native State of Georgia. We know what promise attended his taking a seat upon this Bench.

Heretofore, these meetings have been called to express the feelings of the Bar upon the passing away of a Justice, or,—on very rare occasions,—of a great lawyer. These men had finished their lifework. The record of usefulness had been made up. To-day, we mourn because one who had scarcely reached the maturity of his powers has been cut down.

But we must be thankful that Mr. Justice Lamar, in the span of life that was his, had indeed accomplished so much. We know that he approved himself an able, a faithful and a true man. We can assure ourselves that, had he lived, his work would have been of increasingly large value to his country.

I am grateful for the privilege, coming as I do from New England, of adding a word to what has been said by my friends from the South, and of bearing witness with them that there was plainly to be seen in Mr. Justice Lamar a man of noble build, who had already advanced far on the road to distinction—a man, whose name shall be borne upon the records of this Court as, in a marked degree, a wise, a pure-minded and a sound Jurist.

REMARKS OF MR. ALFRED P. THOM.

A little over five years ago many members of the American Bar stood in this room with uncovered heads and saw one of their number take the oath as a Justice of this Honorable Court.

It was my privilege to be here and to witness the induction into office of the new Justice, Joseph Rucker Lamar of Georgia.

Nowhere in that assemblage of lawyers—nowhere in any part of this Nation where he was known—was there a doubt

of the purity of his soul or of the elevation or rectitude or soundness of his moral standards. By universal acclaim he was welcomed here as worthy to be trusted with the ideals and responsibilities of justice, as justice existed and was cherished in the hearts and consciences of the American people.

It was known that he had lived an upright life; that he cherished no enmities; that he possessed no class consciousness or hatreds; that he loved his neighbor; that he had no purpose, and, in his purity and majesty of soul, there could exist no purpose, except to learn what justice was and to administer it with equal hand and in untainted quality to all men alike.

It was realized that by his whole life he had fitted himself for this great work and that he measured up to the standard set by the American people for their Judges, which required, not only that they should live upright, moral and intellectual lives, but that they must preserve an untarnished reputation, so that no shadow of doubt could rest upon the quality of justice as administered in the Courts. To be a judge, a lawyer is responsible not only for what he is but for what he is thought to be. It is essential that he should have not only character but standing. All men knew that Justice Lamar not only had deserved but had achieved this spotless reputation, and so, in the silent verdict of the Bar and of the people, he stood approved.

For five years he continued in the high office of Justice of this Court. By no act of his on the Bench, by no act of his in private life, did he disappoint public expectation or lower the standards appropriate to be maintained by a member of this great tribunal. Called upon to consider and determine great controversies in which the interests and passions of men, of parties and of governments were acutely involved, he never lost his judicial poise, he never descended from the serene heights of impartial judgment, he never turned his back on weakness or cringed before the demands of power.

His name has passed into history in important, and, in many instances, in controlling association with great causes,

which have become creative forces in moulding our jurisprudence and have served to advance the standards and conceptions of justice among men.

He was faithful to the Constitution. He did not regard it as an antiquated or outgrown instrument, but as a living force, embodying the true principles of liberty and justice, and capable of adaptation, in the realm of government, so as to meet justly and equitably the demands of human justice and of human progress, just as, in the moral and spiritual world, the principles of the Sermon on the Mount are eternal and capable of adaptation to all the changing needs of the human soul.

At the altar of the Constitution he worshipped with the simple faith of one who never doubted, and who found both his strength and his inspiration in the great principles of justice, equality and liberty, which he believed to be eternal as they were announced by the fathers when they created this Republic and dedicated it to mankind. He believed, as strongly expressed in a recent patriotic utterance, that,

“With wisdom and with patient skill,
Wide learning and profoundest thought,
With zealous and unselfish will,
Our patriotic fathers wrought.

They laid foundations deep and wide,
They made their own immortal plan,
And reared on lines before untried,
A home for freedom and for man.

They fortified each sacred right,
They shielded all from fraud or wrong,
They curbed the power of selfish might,
And armed the weak against the strong.

Upon themselves they put restraint
Lest hasty passion, given range,
Should silence reason with complaint,
And bring some needless harmful change.

Through storm and stress, through many fears,
Through war and fierce domestic strife
Down through the lapse of changing years,
They guarded well the Nation's life.

The Constitution; still it stands,
August, majestic, lofty, lone;
No fabric wrought by human hands
Such strength and symmetry has shown.

The Constitution; there it stands
A beacon in a storm-tossed world;
And peace will reign in other lands
When they its banner have unfurled.

* * * * *
We love the men who gave it birth,
We venerate its every clause;
Benign protector of the hearth,
Stern guardian of the country's laws.

To us belongs the pious task
To ward from it all threatening foes,
Both those who lurk 'neath friendship's mask,
And those who deal it hostile blows;

To rouse the people of the land
To know the treasure they possess,
And smite each sacrilegious hand
That's raised to harm or make it less."

Now that Justice Lamar's career is ended and he has been laid by tender hands in an honored grave, we who survive can begin to take some just measure of his life and can truly say of him that in all that he did here he strengthened the confidence of mankind in the purity of justice and kept inviolate the faith of the Constitution.

The Resolutions were adopted, and, on motion of Mr. Solicitor-General Davis, the meeting adjourned.

PROCEEDINGS IN THE
SUPREME COURT OF THE UNITED STATES
IN MEMORY OF
JOSEPH RUCKER LAMAR.

Monday, June 12th, 1916.

Present: The Chief Justice, Mr. Justice McKenna, Mr. Justice Holmes, Mr. Justice Van Devanter, Mr. Justice Pitney, Mr. Justice McReynolds, and Mr. Justice Brandeis.

Mr. Attorney-General Gregory addressed the Court as follows:

May it please your Honors: For the second time within a year it has become my duty and sad privilege to present to you Resolutions passed by the Bar on the death of a member of this Court.

Upon the former occasion I paid an inadequate tribute to one who had been a friend from my youth. It was not my privilege to come in intimate contact with the late Justice Lamar until a very few years before his death, and yet the feeling which moves me most is one of keen personal loss, a feeling that a great light has gone out, not merely one that illumined the legal shadows, but one that warmed the hearts of men and made them kinder, nobler, and more charitable.

In recalling the personality of a really great man who has left us we do not see him as a combination of various intellectual and moral qualities. On the contrary, we remember him as the possessor of some one striking characteristic, which, like Saul, son of Kish, towered above its brethren and challenged the attention of all observers.

While Justice Lamar was a powerful advocate, a wise counselor, an able and just Judge, a cultured gentleman, and a great citizen, his dominating characteristic was a peculiarly winning courtesy, a kindly consideration for all with whom he came in contact. He was born and bred among a people

who have always cherished this quality, and yet in his case it was not the result of association and training. By a perfectly natural process he garnered the sunshine of life and dispensed it with a prodigal hand.

In contemplating a life like this you think of Hawthorne's tribute to the fragrant white water lily of the Concord River, of how he marveled at its capacity for absorbing only loveliness and perfume and we reflect, as did the author, on how some persons assimilate only what is ugly and evil from the same moral circumstances which supply good and beautiful results—the fragrance of celestial flowers—to the daily lives of others.

The power to see, to appreciate, to absorb, and to express what is good comes from the heart, and this man, like Abou Ben Adhem, would have said to the angel with the golden book, "Write me as one that loves his fellow-men."

I doubt not that it was because of this marked characteristic that Justice Lamar was selected by the President in the summer of 1914, from all the able men of the Nation, to represent the United States at the conference called by Argentina, Brazil and Chile, to consider the delicate Mexican problem. Surely no more critical situation could have arisen to test to the utmost the best qualities of heart and mind. He approached its consideration carrying in his right hand "gentle peace to silence envious tongues," and no such mission was ever more successfully carried out.

Being a man of this type, and of strong intellect and wide learning, he naturally brought to the study of questions of abstract law a sympathetic interest and enthusiasm which made even the dry bones live again. He was never satisfied with his work while any possibility of further effort remained. Where others would have rested content, his ardent zeal for perfect accomplishment spurred him to continued labor. Accuracy, simplicity, and clearness of expression were his constant aim and his marked achievement.

In appraising the work of his professional brethren he was most generous. He took intense pleasure in the accomplish-

ments of others, and often pronounced their work "well done" with genuine enthusiasm where he would have criticised it if his own.

Joseph Rucker Lamar was the son of Rev. James S. Lamar and Mary Rucker Lamar. His family was of Huguenot descent, the founder, Thomas Lamar, having settled in Maryland in 1663. His ancestors moved to Georgia in 1755 and have taken a prominent part in the public life of the State.

After attending preparatory schools in Georgia, he matriculated at the State University in 1874, but before graduating entered Bethany College, West Virginia, of which Dr. William Kimbrough Pendleton, afterwards his father-in-law, was president. He graduated from this institution in 1877, and after studying law at Washington and Lee University was, on April 16th, 1878, admitted to the bar in Augusta, Georgia, where he opened an office and established his home. On January 30th, 1879, he married Miss Clarinda Huntington Pendleton, who, with two sons, survives him.

The society of Augusta has always been cultured, and young Lamar was from early manhood one of the most charming of that delightful circle, and rapidly became one of the leading spirits in the social and civic life of the community.

From 1886 through 1889, Mr. Lamar represented Richmond County, in which Augusta is situated, in the Georgia Legislature. He was the author of some of the most important legislation of his State, notably the act regulating the exercise of the right of eminent domain, and the laws governing voluntary assignments.

Shortly after ending his legislative services he was appointed one of the codifiers who revised and edited the Code of Georgia of 1895. His labors on this commission were most able and of great service to the State.

Meanwhile his practice had become wide and varied, and extended throughout Georgia and neighboring States. There

were few cases of great magnitude in that section in which he was not employed.

On January 13th, 1903, the Governor appointed Mr. Lamar a justice of the Supreme Court of the State to fill a vacancy on that bench, and he was elected to the position in 1904. He resigned in the spring of 1905 and returned to the practice of law at Augusta.

He was the author of a number of historic and literary contributions, many of which are to be found in the printed volumes of the reports of the Georgia Bar Association, of which he was an active member.

Except while on the State Bench, he served as a member of the Board of Law Examiners for admission to the Bar of Georgia from the organization of that institution until his appointment as a member of this Court. He was Chairman of this Board from the spring of 1905 until his removal to Washington.

On December 12th, 1910, he was nominated by President Taft to be an Associate Justice of the Supreme Court of the United States, was confirmed by the Senate on December 15th, and took his seat on January 3d, 1911.

His services on the Bench of this Court are well known. During the five years of its duration, he participated in the decisions of 1,179 cases, wrote the opinion of the Court in 114 and the dissenting opinion in 8. His opinions are found in volumes 220 to 238, inclusive, of the United States Reports. His sound judgment, wide learning, and great clearness and facility of expression won for him the confidence and admiration of the Bar and the public.

Perhaps the most important opinions rendered by Justice Lamar were in the cases of *United States v. Grimaud*, 220 U. S. 506; *Gompers, et al., v. Bucks Stove & Range Company*, 221 U. S. 418; *United States v. Midwest Oil Company, et al.*, 236 U. S. 459; *United States v. Delaware, Lackawanna & Western Railroad Company* and *Delaware, Lackawanna & Western Coal Company*, 238 U. S. 516.

In *United States v. Grimaud*, the Secretary of Agricul-

ture had passed an order forbidding grazing on public lands without permits. The defendants were charged with violating this order and contended that the Act of Congress making it an offense to disobey the regulation of the Secretary was unconstitutional in that it attempted to delegate legislative authority. The decision overrules this contention.

In the case of *Gompers, et al. v. Bucks Stove & Range Company*, plaintiffs in error were charged with contempt in violating an injunction of the Supreme Court of the District of Columbia by publication of an "unfair" list. It was held that the publication was a contempt, but that the proceedings were not properly brought.

The case of *United States v. Midwest Oil Company, et al.*, was brought to test the Government's right to oil lands valued at many millions of dollars, and involved the authority of the President to withdraw such lands from public entry. It was decided that the President had this authority.

United States v. Delaware, Lackawanna & Western Railroad Company and the *Delaware, Lackawanna & Western Coal Company* arose under the Commodity Clause of the Act to Regulate Commerce and under the Anti-Trust Act. The Railroad Company at the time of the passage of the Commodity Clause was engaged in mining, buying, transporting, and selling anthracite coal. To divest itself of title before transportation began, it caused the Coal Company to be organized with stockholders and officers in common with itself. The Railroad Company then caused the output of its mines to be transferred to the Coal Company under a contract which placed the latter company largely, if not completely, within the power of the former.

The District Court dismissed the petition. The Supreme Court reversed this decision, holding that by reason of having stockholders and officers in common and by reason further of the above-mentioned contract, the two companies were so united in ownership and management as to give the Railroad Company an interest in the coal of the Coal Company, and that, therefore, the transportation of such coal by the

Railroad Company constituted a violation of the Commodify Clause. The Court also held that the contract in question violated the Anti-Trust Act.

In 1911, Yale University, in recognition of his learning and ability, conferred on Justice Lamar the degree of Doctor of Laws.

He was active in many spheres of public work in the communities in which he lived, and in the Christian Church, of which he was a devout member.

He died in this city on January 2d, 1916, having just entered upon his fifty-ninth year. He was in the zenith of his powers and usefulness when seized with the fatal illness which terminated his life.

This is a brief outline of the man's character and life. It conveys no idea of his vivid personality. It faintly portrays his kindly nature and the loving service to country, family, and friends bereft.

Beyond their admiration for his talents and accomplishments will stand foremost with all privileged to know him their recollection of his warm, magnetic nature.

Strong, ardent, a man among men, a warrior in every battle for truth and right, always ready for every conflict which would advance the cause he espoused, he was one of whom it could with perfect truth be said:

"His life was gentle; and the elements
So mix'd in him, that Nature might stand up
And say to all the world, 'This was a man'."

I now read the Resolutions:

Resolved, That the members of the Bar of the Supreme Court of the United States lament the untimely death of the late Joseph Rucker Lamar, Associate Justice of the Supreme Court of the United States, and record their appreciation of his learning, ability and high character, the affectionate regard with which they now cherish his memory, and the great loss to the Bench and the Country occasioned by his death.

A native Georgian, he was born of an illustrious family, and by his life's work not only sustained the best traditions

thereof but added lustre to the great name he bore. He was the second of the Georgia Lamars to win a place on the Bench of the Supreme Court of the United States, the first being the late L. Q. C. Lamar, appointed from the State of Mississippi. Each of these two Lamars brought to the Court superb mental equipment, lofty ideals, intense Americanism and consecration to duty, and by the product of his labors more than vindicated the wisdom of his appointment.

Joseph Rucker Lamar was born October 14th, 1857, and after a collegiate education came to the Bar at twenty-one years of age. His entire life thereafter was one of devotion to the law, for he never knew any other field of labor.

As a practitioner at the Bar he won renown and success, and, at a comparatively early age, easily ranked among the leaders of the Bar of his State. As an antagonist he was always formidable, for he was always prepared, but he was also always delightful. His courtesy was disarming. He was always fair, and neither sought nor would he have any mean advantage.

In 1892, he was chosen as one of three Commissioners to codify the laws of his State and the work he there did, resulting in the Code of 1895, will ever stand as a monument to his discriminating judgment, to his industry, and to the thoroughness and completeness with which he performed each task assigned to him.

Prior to this work of codification he served for two terms as a member of the Lower House of the General Assembly of Georgia, and to the legislative field he carried the training and habits of the lawyer, giving to his State, upon all public questions, the careful preparation, the thoughtful consideration, the sound advice and unswerving loyalty of attorney to client. He was always earnest, always sincere and never knew but one way to discharge any duty, and that way was to discharge it to the very best of his ability.

On January 13th, 1903, he took his seat as an Associate Justice of the Supreme Court of the State of Georgia, and

resigned therefrom in 1905 on account of his health and resumed the practice of law.

The fruits of this service were found in the affection and admiration for him of his Associates on the Bench, and of the Bar of the State, and in strong virile opinions, classically expressed, which to-day, as then, enrich the permanent judicial literature of his State.

On December 12th, 1910, he was appointed an Associate Justice of the Supreme Court of the United States. His appointment was shortly thereafter confirmed by the Senate and on January 3rd, 1911, he took his seat on the Bench. He died at his home in the City of Washington on January 2nd, 1916, not quite completing five years of service.

From the day upon which he entered this service he consecrated his life and all that was in him to the faithful performance of its duties. His application, his untiring research, his painstaking care and his patient labor were known to all who had dealings with the Court.

Others have been and no doubt will be permitted to give more years of service to their Country on this great Bench than was he, but to him was given the high privilege, by excessive and never-ending toil, to give his life. No man could give more.

Measured by time, his service was not long, but measured by results, a great service was completed. He served long enough to demonstrate his aptitude and fitness for the work, and long enough to leave upon the archives of his Country the enduring impress of a great and just Judge.

His life was one of devotion to American ideals. He was ever a student of his Country's history, and no man was more familiar than he with the origin of the Government under which he lived or with the foundation principles upon which it rests. The extent and the limitations of its power were clearly defined in his mind and full well he knew how liberty came, and how, only, it can be preserved.

To the office of Associate Justice of the Supreme Court of the United States he brought the ability, the strength, the

courage and the patriotism to preserve our Republic as the Fathers founded it, and all these he dedicated to that great end.

In May, 1914, he was invited by the President to serve as a Special Commissioner of the President, in connection with Commissioners from certain South American countries, in the matter of mediation in the troubled affairs of our neighboring Republic of Mexico. With his habitual response to every call of duty he accepted the invitation and assumed the responsibilities thereby imposed. The Commissioners so selected met with Commissioners from Mexico at Niagara Falls soon after their appointment, and concluded their delicate and important labors in the month of July following, to the satisfaction of the several Governments participating.

He was by nature kind and gentle, but beneath his kindliness of manner there was a fixedness of purpose and a courage of steel that knew no yielding. He was cautious and careful, but once the path of duty became clear he followed it to the end. He never faltered in the pursuit of truth.

The sweetness and gentleness of his nature, the charm of his personality, the readiness of his sympathy were such that to know him was to love him. The same listening ear that as Judge he gave to advocate, he always kept attuned to hear the voice of humanity. He loved his fellows, and to him the breath of friendship was as incense. It sweetened, inspired and strengthened his life.

In the rich fullness of his sympathetic heart, when he came to prepare his last Will and Testament, in 1899, he incorporated therein the following beautiful statement:

"My friendships many and precious I leave to my family in the hope that they will be cherished and continued. I know of no enmities; but if such unhappily hereafter arise, let them be forgotten."

When the end came for him it is precious to believe that there was still an absence of all enmities, and that he went out into the Great Beyond, leaving behind him a world of

friends only. What more priceless heritage could he have bequeathed?

Resolved, That the Attorney-General be asked to present these Resolutions to the Court with the request that they be entered upon the records, and that the Chairman of this meeting be directed to forward a copy of them to the family of the late Justice Lamar, accompanied by an expression of our profound sympathy for them in their overwhelming bereavement.

The Chief Justice responded:

Mr. Attorney-General, there is nothing to be added to the beautiful tribute which the Resolutions of the Bar, so appreciatively by you presented, pay to the memory of Mr. Justice Lamar. As I grasp their ultimate significance they are intended principally to express the appreciation by his brethren of the Bar of his fealty to the noble ideals of the profession and of the honor which his life and work have reflected on that profession. In fact, while expressing the profound regret which the death of Mr. Justice Lamar has occasioned, as I understand the Resolutions, they seek not simply to express that regret but rather, as it were, to lay the foundations in the permanent records of this Court of a monument to his memory which shall continue to speak of his great moral and mental qualities, of his courageous and conscientious discharge of judicial duty, long after we ourselves shall have gone.

Admirable as are these aims of the Resolutions, I find it difficult to completely adjust myself to them. Ah, how can it be otherwise, since at the very mention of the death of our brother Lamar all sense of exultation or pride at the high ideals to which his life conformed fades out of my thoughts and there remains only the sense of personal sorrow at the loss occasioned by the severance of those ties which were so cherished and by which his brethren were bound to him—a sorrow whose depth can not be fully fathomed without the knowledge begotten by association in judicial work of the attributes of his nature, so gentle, so true, so faithful, so

brave, so generous, so devoted! But controlling personal feelings, let me endeavor to bring myself into harmonious relations with the purposes of the Resolutions by making some few suggestions as to impressions made upon me by his work on this Bench and pointing out the dominant intellectual influences which, in my opinion, formed and controlled his abstract conceptions as to some important questions, and which consequently tended to shape the conclusions which he reached in the discharge of his duties concerning such questions.

Too young to have been a participant in the Civil War, he was yet old enough to have appreciated the anguish of that appalling conflict, the multitude of noble lives on both sides which were forever stilled, the homes made desolate, the fields wasted, and the blight of a destroyed society and of nearly all prosperity, which came, at least, in one section, as a result of that struggle—impressions which in the very nature of things indelibly stamped upon his developing life the dread consequences which necessarily would follow in the wake of a disintegrated union and a destroyed national life. He was, moreover, old enough to have understood and appreciated the anguish, more appalling than the calamity of the war, of the period which followed in its wake, and thus to have also impressed upon his nature beyond the possibility of forgetfulness the destruction of individual right which would arise from reducing the States to mere dependent vassals deprived of local autonomy and to be governed from afar by a centralized government, whether of executive power or of bureaucratic authority. Thus indubitably, my belief is, it resulted that when by training his mind came to explore the sources of our constitutional life, his opinions came to be composite; that is, in his mind there resulted, as it were, a fusion of State and National power, united but not destroyed, both co-operating to the perpetuation of the other. In other words, his opinions came by a natural process to embody the very concepts upon which our institutions must rest.

Reared virtually in the atmosphere of an agricultural com-

munity, when by the force of his ability he came in later life to consider a wider range—that is, the relation to each other of diverse and seemingly conflicting activities and the possibility of co-ordinating and preserving them all—it also seems to me clear that the process which had shaped his convictions as to our constitutional government came to mold his opinions on the subjects just stated. In other words, he came fully to appreciate that to assume a society resting solely upon the pursuit of agriculture and which would be confined to that relation was a negation of the existence of society itself, which in its very essence embodies the complex resultants of all the activities of human life, giving rise to the corresponding duty to harmonize and adjust them to each other so that they all might live and develop for the blessing and advancement of mankind.

In practice it may be said that these ultimate convictions were applied by Mr. Justice Lamar in his discharge of judicial duty in a threefold aspect: First, the relation of the activities of individuals and their results to each other; second, the relation between the power of the States and that of the Nation; and, third, the obligation and effect of the limitations imposed upon all government as the consequence of those great guarantees in favor of individual right forming an inherent part of our constitutional system. As to the first, it is enough to say that the opinions expressed by Mr. Justice Lamar in the performance of his duties here afford apt examples of the keenness of his appreciation of the duty to adjust between conflicting activities so as to preserve the rights of all by protecting the rights of each. As to the second, intensely local as were his affections and his ties, nothing is more clearly portrayed by his work on this Bench than the broad conception which he entertained of the duty to uphold and sustain the authority of the Union as to the subjects coming within the legitimate scope of its power as conferred by the Constitution. As to the third, no demonstration could be more complete than that afforded by his work of the fixed opinion on his part as to the duty to uphold and perpetuate the great guarantees

of individual freedom as declared by the Constitution, to the end that the freedom of all might not pass away forever. Convinced as he was from his study of the sources of our constitutional institutions that their enjoyment was dependent upon the limitations in favor of individual right which the Constitution expressed, and that such limitations were essential to secure us from the anguish and turmoil and tyranny and the disappearance of freedom which had always resulted where such guarantees did not exist or were not adhered to, he had come to feel that for the purpose of their preservation he was but a trustee for the millions who were to come. His mind was too penetrating to listen for a moment to the suggestion that freedom would be secured by destroying principles which were essential to its preservation or that wrong would result unless truths which were eternal were violated. Thus controlled, his work on this Bench leaves no room to doubt that no thought of mere expediency, no mere conviction concerning economic problems, no belief that the guarantees were becoming obsolete or that their enforcement would incur popular odium ever swayed his unalterable conviction and irrevocable purpose to uphold and protect the great guarantees with every faculty which he possessed. In considering such questions there shone ever in his heart the light of Georgia firesides and the great duty he owed to those firesides, indeed, to every individual, not only in Georgia but elsewhere, to see to it that by no act of his did the inherent principles of individual freedom guaranteed by the Constitution fail to receive enforcement or their efficacy become impaired by misconception or misrepresentation.

O true American and devoted public servant, O cherished friend and faithful comrade, O sweet and noble soul, may it be vouchsafed that the results of your work may endure and fructify for the preservation of the rights of mankind, and may there be given to us who remain, wiping from our eyes the mists begotten by your loss, to see that through the mercy of the inscrutable providence of God you have been called to rest and to your exceeding reward!

Let the Resolutions be recorded.

MEMORIAL OF FREDERICK C. FOSTER.

BY THE COMMITTEE.

Frederick Colbert Foster was born in Bibb County, Georgia, on the 25th day of October, 1845, and died in the City of Baltimore on the 20th day of April, 1916. On the 18th he submitted to a serious operation at Johns Hopkins Hospital. His splendid constitution enabled him, even at his advanced age, to undergo the severe ordeal with every evidence of a happy recovery. But all improvement vanished with the development of pneumonia and despite the efforts of the most eminent physicians, the great lawyer, just judge and courtly gentleman passed away.

He had been in failing health for several years, but continued the practice of his profession, to which he was devoutly devoted, till a crisis in his illness compelled him to submit to the knife, with fatal results. He is survived by his wife and four children, two sons and two daughters, who mourn his loss and revere his memory.

He came of ancient and distinguished lineage. He was the eldest son of Colonel Albert G. Foster, so long and honorably connected with the history of Middle Georgia, and nephew of Judge Greene Foster, one of the most learned lawyers, and eloquent advocates of his State and time. His mother, Mrs. Caroline Colbert Foster, a shining type of the Southern woman of the olden times, survives him, and in September will reach her ninety-third year. On his father's side he is a lineal descendant of the famous Captain Arthur Foster, of Revolutionary fame, and through his mother, of Major Powers, a gallant and trusted officer under Washington.

Our lamented friend was worthy of the race from which he sprang, and like his ancestors, served his country nobly and well, in peace and war.

His first teacher was the famous John G. Clark, and later he attended the widely known school of Carlysle P. Beeman at Mount Zion, in Hancock County. He left this institution at sixteen years of age to enlist as a Confederate soldier. He was first a member of Findlay's Battalion and afterwards joined the army of General Joseph E. Johnston at Kennesaw Mountain, participated in the fierce campaign around Atlanta and accompanied General Wood to Tennessee and took part in the bloody combat at Franklin.

After the war he entered Penfield College, now Mercer University, and graduated with distinguished honors from this institution. After finishing his collegiate course, he studied law under his distinguished father and in 1870 was admitted to the Bar. He was associated with his father in the practice of law, under the name of Foster & Foster and the firm for a long number of years enjoyed a large and remunerative practice. To his death he continued to enjoy the confidence of this large clientele and few members of the profession in our day achieved so continuous and pronounced a success at the bar.

In 1882 he was a member of the General Assembly and retired at the end of his term. He was twice elected, without opposition, Mayor of Madison, was appointed Judge of the Ocmulgee Circuit and suffered only one reversal at the hands of the Supreme Court and at the time of his death was a member of the House of Representatives.

He was a member of the Board of Trustees of The Soldiers' Home. He was devoted to its interests and perhaps the most eloquent and effectual address he ever delivered was his appeal to the Legislature in its behalf. Men who heard it and who are competent to judge, pronounced it the most notable combination of pathos and logic ever heard on the floor of the House.

Judge Foster became at once the center of interest in every circle he entered. His personal appearance was exceedingly attractive. He was tall, erect and symmetrical. His massive

head was crowned with a shock of wavy hair, which whitened by age, added to his dignity and manly beauty. He was the ideal Southern gentleman of the old school, kind and courteous, chivalrous and loyal, generous and noble. He was a happy mixture of all that was best and noblest in the old and new South—supremely proud at all times that he was born under its sun and reared amid its civilization.

As a lawyer, he was accurate and profound, of rare resourcefulness and large practical wisdom. In fact he seems to have inherited an understanding of the fundamental principles of his profession. He was pronounced by Justice Lamar the most "wonderful natural lawyer" he had ever met. To this knowledge was added an eloquence of rare and effectual power. He drew readily and with power, impressive illustrations from his vast store of knowledge. He redeemed the dull, monotonous details of a great case with the spice and kindling of anecdote and humor and used at will and with masterful power the weapons of ridicule, invective and pathos as the occasion called.

With him passed one of the most majestic and imposing figures of our State and time; one of the few remaining lawyers of the old South; one who was trained and schooled in the ideals of the profession, when its love of the law was stronger than the love of money, when it "scorned to crook the pregnant hinges of the knee where thrift might follow fawning," when it moulded public opinion and shaped the destiny of communities, states and country and who watched with regret and despair its slow but sure surrender to the inexorable demands of modern methods.

MEMORIAL OF WILLIAM F. EVE.

BY THE COMMITTEE.

William Fred Eve was born in the City of Augusta on March 8th, 1851, a descendant of a long line of distinguished ancestry. His father was Joseph Adams Eve, one of the most illustrious physicians of the City of Augusta—a man of great erudition and of national reputation in his profession. His mother was Sarah Garland Toombs, a woman of saintly character and brilliant intellect.

Judge Eve acquired his early education at Richmond Academy, and completed his course at the University of Virginia, where he graduated in 1871 in the study of the law and returned to the City of his birth, and the practice of his adopted profession.

In 1875 he was made Solicitor of the County Court of Richmond County. Three years later he was appointed Judge of that Court. This was a court of limited jurisdiction and he had scarce entered upon the duties of this judgeship when his far-seeing intuitive intellect realized the urgent necessity for a court that would be unlimited in its jurisdiction, where the congested condition of the dockets of the other courts might be relieved, and the delays of the law—that standing reflection on its efficiency—might be minimized as far as practicable. When the Act creating the City Court of Richmond County, a court that was unlimited in its jurisdiction, except in all matters that were not by the Constitution reserved to the Superior Court of the County, was adopted by the Legislature, Judge William F. Eve was appointed its first Judge, remaining on the bench of that Court from the date of its creation October, 1881, to the date of his death, January 21st, 1916.

Judge Eve's public career from 1875 to 1916 is inseparably woven into the history of Richmond County.

In 1882 the same far-seeing intellect that had inaugurated the Court, conceived the ingenious idea that the Judge of the City Court of Richmond County should also be Commissioner of its Roads and Revenues, by virtue of being its Judge.

This startling combination made him at one time practically the Governor, the Chief Executive and the Chief Judicial Officer of the entire County. In this dual capacity he reigned supreme. His powers gave him the right to levy all the county taxes; he expended all the County's revenue and had supervision of all the public roads and public buildings and properties of every character owned by the County during the twenty-five years that this union of offices existed. During that period millions of dollars of the public funds passed through his hands without limitation in its expenditure except what in his judgment and conscience the public good demanded.

It can be seriously questioned whether there ever existed in any community at any time, any man that was ever possessed with as complete power as William F. Eve had for a quarter of a century over Richmond County.

While supreme in his power his reign over the County affairs during the entire period was marked by the highest integrity and ideal justice in the distribution of his power and his patronage that were incident to the office. In the exercise of this great power vested in him, his rugged honesty shone most luminously. Nine Governors in continuous succession nominated Judge Eve Judge of the City Court of Richmond County, and nine senates of the State of Georgia in succession, confirmed that appointment. When the Constitution of the State made that office elective, the people with similar unanimity continued to elect him. Scorning to erect the modern monument of wealth by the exercise of modern methods in taking advantage of his opportunities, he builded for himself a

monument more lasting than bronze, in the trust and confidence of his people.

Endowed with a clear, lucid intellect and a most marvellous degree of patience and ability to await the sounding of a last word that his mind might not reach a conclusion unwise or unjust, he was eminently fitted for judicial service and his public record leaves the judicial ermine, though time-stained, as pure and spotless as the day it first was placed upon his young shoulders. In the hearts of the public who knew him he has erected his monument, lasting as time itself and that people have placed upon it that immortal expression; "Divinity's noblest handiwork—an honest man."

MEMORIAL OF ALEXANDER F. DALEY.

BY A. C. EVANS.

On October 29th, 1915, Judge Alexander F. Daley, died at Dublin, Georgia, during the term of Laurens Superior Court, upon which he was in attendance and shortly after having been engaged in the trial of a case. In his death this State has lost an able lawyer and an upright and patriotic citizen. He was devoted to the interest of this Association and frequently attended its sessions and took part in its proceedings and served on important committees of this Association, last year being one of its Vice-Presidents.

Judge Daley was born in Effingham County, Georgia, on March 29th, 1852, and was admitted to the bar in March, 1872.

In addition to engaging in an active practice of his profession which he continued up to the time of his death, Judge Daley was deeply interested in the development of his State and section. He organized the Wrightsville & Tennille Railroad in 1883, and up to 1899 was its General Counsel, and from that date to the time of his death was both President and General Counsel. He managed the affairs of this railroad with such ability and skill that it developed and grew from a small beginning to a splendid system. He was one of the few lawyers whose life was a conspicuous success both at the bar and in railroad circles. He held many positions of trust and honor in his community. He served one term in the State Senate and was appointed by Governor Terrell Judge of the Superior Courts of the Middle Circuit, which position he filled with honor and distinction and voluntarily retired to resume the practice of his profession and to reassume his duties as President and General Counsel of the Wrightsville & Tennille Railroad.

Judge Daley took a very active interest in educational affairs. For a number of years he was President of the Board of Trustees and the leading spirit in the management of Warthen College and he always manifested a deep interest in the affairs of his church and his counsel was sought at its annual and district conferences.

His devotion to his family was marked and beautiful. His home life was characterized by love and devotion. As a lawyer he had the esteem and confidence of his fellow members of the bar and the people generally, as a citizen he was patriotic and public-spirited, as a public official, diligent and efficient, as a business man, courteous and capable, as a husband and father, affectionate and devoted, and as a Christian, loyal and true, and in his death this Association loses a faithful and devoted member and this State an able lawyer and just man.

MEMORIAL OF ANTHONY COWART PATE.

BY WARREN GRICE.

Judge A. C. Pate was the son of Redding Hamilton Pate, and was born in Washington County, Georgia, in the year 1835. When a child he lost his father, and at an early age his mother with three children moved to Dooly County, where he was reared and where he read law.

The brothers of Judge Pate were Dr. Redding H. Pate, prominent in the medical profession, who served as a surgeon in the Confederate army and subsequently as a legislator from the County of Dooly; and his brother, Major John H. Pate, of Pulaski County, a field officer in Thomas' Georgia Brigade, and afterwards a member of the State Senate.

Anthony C. Pate was admitted to the bar at Irwinton, Georgia, about the year 1860, and had little opportunity to practice law before the war between the States. He served as an officer during that struggle. At its close he moved to Pulaski County and opened an office at Hawkinsville. He did a large and successful practice. On the creation of the Oconee Circuit in 1871, he was appointed Judge thereof by Governor James M. Smith, and held this position for thirteen years, until he voluntarily retired. He again entered the practice, and for a time thereafter had a large clientele, but he had gradually relinquished the law and for some years before his death he was only occasionally seen in the courtroom.

Among his partners were L. C. Lyon, R. C. Jordan, C. R. Warren, George Bright and Marion Turner.

At the time he went on the bench Judge Pate had not had a large experience at the bar, but he was well grounded in the principles, was cautious, and every one knew that he wanted to do right. The result was he remained on the bench for

thirteen years, having practically no opposition. He presided regularly in counties that had been accustomed to the administration of such men as Judges James J. Scarborough, Peter E. Love, John R. Alexander and Augustin H. Hansell, and in this important post Judge Pate sustained himself.

As a lawyer he was successful. In the concluding argument to a jury he was powerful. The people who composed the juries in the counties of the Oconee Circuit knew Judge Pate, and they had confidence in him. He was fair to the Court and loyal to his clients. He was the soul of honor. For years he was a prominent figure in a large section of this State. He loved his friends, and especially the companionship of the young lawyers. He could tell a good anecdote, and was full of reminiscences concerning that generation of lawyers who rode the old Southern Circuit in the early days.

At the time of his death, he was a trustee of the Confederate Soldiers Home of Georgia.

Judge Pate was bereft of his wife thirty years ago, and remained a widower. His two daughters survive him—Mrs. N. P. Jelks and Mrs. J. P. Watson, both of Hawkinsville.

Pulaski County was for many years remarkable for the comparatively large number of vigorous old lawyers who lived there and who were in full practice. He was the last but one of these, who, for a generation longer than most of those who began the practice when they did, continued to "ride the circuit" from Hawkinsville. Ryan and Jordan and Watson and Mitchell and Martin preceded him in the order named to the undiscovered country, and on the 13th day of February, 1916, the spirit of Judge Pate encamped with these on the silent shores.

REPORT OF THE COMMITTEE ON LEGISLATION.

Familiarizing ourselves with the merits of the various bills recommended by this Association and catching a glimpse of that glory which we thought would come to us from a successful performance of our duty, we donned our Sunday best and with double quick time, approached the outer door of Georgia's legislative temple. Our insistent knock was grudgingly answered by a "come in." We lost no time picturing the beauties and necessities of the bills sticking out of our pockets, and proclaiming them as the panacea of the people's ills.

After due process of consideration, or the lack of it, we were told that the legislature was engaged in the high and holy consideration of the liquor question and had no time to devote to other interests and recommendations of the Georgia Bar Association. However, if we would leave the bills, they would in due time, but in decency and order, receive most careful consideration.

Silently and sadly we buried them there, where "only the wind maketh moan and never a flower is strewn." They still rest in peace.

Your Committee hopes, since by the joint operation of act and intention of the legislature, elusive prohibition has been thrown as a guard around our State, these beloved bills will have an early and glorious resurrection, and yet become adornments of our statute pages, at least in time for the salvation of our children.

Z. B. ROGERS,
Chairman.

REPORT OF THE COMMITTEE ON INTERSTATE LAW.

A review of the reports of former Committees on this subject reveals that there has been called to the attention of this Association year after year:

(a) The extensive and valuable work of the National Conference of Commissioners on Uniform State Laws;

(b) The fact that some of its proposed laws have been adopted by nearly all of the other States of the Union;

(c) The fact that Georgia has never adopted any one of these laws;

(d) The fact that Georgia has never made any contribution to the expense of the Conference, or manifested any interest otherwise than appointing commissioners to represent it in the conference.

There is no propriety in recounting any of these points to you, as nothing is more wearying than a twice-told tale.

At the meeting of the Conference last summer at Salt Lake City a reorganization was made and in this a new standing committee was appointed on "Adoption of Approved Acts." The Chairman of your Committee is a member of this new committee for "Adoption of Approved Acts," and feels a consequent burden resting upon him to do something towards arousing interest in Georgia for the work of the National Conference.

The commissioners of the other States very generally submit annual reports to the Governors and Legislators of their respective States, calling attention to what has been done by the National Conference, and as the Georgia commissioners have never submitted such a report, it is possibly due to that fact, in part at least, that Georgia has paid no attention whatever to the work of the National Conference. There has been some excuse for the Georgia commissioners failing to

make reports, as they must necessarily be printed in order to reach all Legislators, and that involves considerable expense, and the Commissioners seem to have thought that they had contributed enough in a financial way when they paid their own expenses in attending the meetings.

We append herewith the report of the commissioners for Georgia to be made to the Governor and Legislators of Georgia this year, and suggest that should this Association concur with your Committee in thinking it worth while, that this Association have enough copies of this report printed to furnish one to the Governor and each of the members of the Legislature. Adopting the methods used in other States may accomplish the results attained in other States.

J. HANSELL MERRILL, Chairman.
T. M. CUNNINGHAM,
J. W. BENNET.

APPENDIX.

FIRST ANNUAL REPORT OF THE BOARD OF COMMISSIONERS FOR THE PROMOTION OF UNIFORMITY OF LEGISLA- TION IN THE UNITED STATES.

To His Excellency the Governor and the Honorable Legislators of the State of Georgia:

The Board of Commissioners for the Promotion of Uniformity of Legislation in the United States submits the following report, in order, not only to render an account of their stewardship, but with the hope of arousing some interest in this State on the work of the Conference to the end that Acts proposed by it may be adopted in Georgia.

ORIGIN.

With the growth of commerce and means of transportation in the United States it gradually became evident that the scheme of government embodied in the Constitution of the United States adopted in 1788 involved certain defects in its operation. The powers granted to the Congress of the United States were limited to those matters which were then deemed national, while those which were then deemed local were left to be entirely dealt with by the legislatures of the several States, acting independently of each other.

As the country developed a means of travel and intercourse increased in a way not dreamed of in 1788, it became apparent that there were many matters of supreme importance to the welfare of the people of all the States which were clearly outside the powers of Congress.

The only practical way of dealing effectively with these matters of general concern was the adoption of some method which should secure uniformity of action by all the States.

UNIFORMITY OF STATE LEGISLATION.

The scheme which was finally adopted to bring about this result was the creation of a body clothed only with advisory powers for the drafting of legislation.

The American Bar Association was largely instrumental in forwarding the movement.

This new body was to consist of commissioners appointed by the several States, acting through their Governors or legislatures.

These commissioners were to meet annually, and frame laws governing matters affecting the general welfare of the whole country.

NAME.

The name adopted for this new body was the Conference of Commissioners on Uniform State Laws. This name has recently been enlarged and now reads the National Conference of Commissioners on Uniform State Laws.

SESSIONS.

There have been regular annual sessions of this body since the year 1892. These sessions have always been held during the week prior to the meetings of the American Bar Association and at or near the places where those meetings have been held.

GROWTH.

In 1893, nineteen States had appointed commissioners. In 1895, twenty-eight States and one territory had joined in the work. In 1915, all the States and Territories and insular possessions were represented by commissioners.

NATURE OF THE WORK.

The nature of the work performed by the conference and the commissioners has been two-fold.

First. The work of framing uniform laws. This work has been done in the first instance by committees appointed by the conference. The committees usually have had assistance from experts having special acquaintance with the matters to be dealt with. The laws so framed have then been discussed, and considered in detail by the conference, sometimes for two years, and more often for five or six,

or more years. When fully satisfied, the conference has approved the uniform laws and recommended the same for adoption by the several State Legislatures.

Second. The work of procuring the adoption by the States of the uniform laws thus framed and approved. This work has hitherto been left largely to the commissioners in each State.

MODELS FOR UNIFORM LAWS FRAMED.

The following is a list of the uniform laws which have been approved by the conference and recommended for adoption in the different States, with the dates when the same were approved:

- 1896. Uniform negotiable instrument act.
- 1900. Uniform divorce act.
- 1901. Uniform insurance act.
- 1901. Uniform migratory divorce act.
- 1901. Uniform divorce procedure act.
- 1907. Uniform sales act.
- 1907. Uniform warehouse receipts act.
- 1907. Uniform divorce act.
- 1909. Uniform stock transfer act.
- 1909. Uniform bills of lading act.
- 1910. Uniform foreign wills act.
- 1910. Uniform desertion act.
- 1911. Uniform child labor act.
- 1911. Uniform marriage act.
- 1912. Uniform marriage evasion act.
- 1914. Uniform partnership act.
- 1914. Uniform cold-storage act.
- 1914. Uniform acknowledgment act.
- 1914. Uniform workmen's compensation act.
- 1915. Uniform pure food and drugs act.
- 1915. Uniform flag act.

UNIFORM LAWS ADOPTED.

As already stated, the matter of securing the adoption of the uniform laws has heretofore been largely left in the hands of the commissioners in the several States. In some of the States the matter has received little attention, and few, or none of the acts have been adopted. In other States the commissioners have been more active, and better results have been attained.

The uniform negotiable instrument act has now been adopted in forty-six States and the Territory of Alaska and all the insular possessions.

The uniform sales act has been adopted in twelve States and the Territory of Alaska.

The uniform warehouse receipts act has been adopted in thirty-two States, Territories and Federal possessions.

We mention these for the purpose of showing that the work of this new legislative body has not been in vain.

The conference has now undertaken the work of rendering assistance to the commissioners in the Several States in the matter of procuring the adoption of uniform acts, so that from now on it is probable that more will be accomplished in the way of securing the enactment of the uniform laws.

At the last conference a committee on "Adoption of Approved Acts" was appointed, of which one of your commissioners (Merrill) is a member. Mr. Merrill will gladly furnish copies of the acts proposed by the conference, and give any other information about its work to any who may be interested.

OBSTACLES.

All of the commissioners serve without compensation. In some of the States they are obliged to pay their own traveling expenses. Nearly all of the States, however, make some contribution to the expenses of the conference which amount to about \$2,500 a year. Georgia not only does not pay the expenses of its commissioners, but has never contributed anything to the expenses of the conference. The Georgia Bar Association has, of late years, contributed \$100 annually to the conference.

The commissioners have not been influenced by anything but patriotic motives. There has been an entire absence of partisanship. The public welfare of the entire country has been the sole end and aim of all concerned.

The great obstacle, outside of mere indifference, has been a spirit of local pride or prejudice on the part of members of the legislatures in different States, which had led them to overlook the fact that the different States of the Union are members of one great family, and are vitally affected, not only by what is done in their own State, but also by what is done in other States of the Union. This obstacle will become less serious, we believe, when the importance of the uniform laws is fully appreciated.

Georgia's position is unique in that it is the only State in the Union that has manifested no interest whatever in the work of this conference save to appoint commissioners. Not only has it never appropriated any money for the conference, but it has never adopted one of the acts proposed by the Conference.

So many of the acts of the Conference have been adopted by other States that Georgia is becoming very much isolated on these very important subjects. And this must necessarily work a very great dis-

advantage in our business with other States. This disadvantage will increase as the adoption of these acts by other States progresses.

We conclude, therefore, with a very earnest request that each of you consider the suggestions contained in this report, and call on us for any additional information that may be desired, that Georgia may adopt these laws and keep in line with the progress of the other States.

Respectfully submitted,

P. W. MELDRIM,
J. H. MERRILL,
T. A. HAMMOND,
Commissioners.

REPORT OF THE COMMITTEE ON LEGAL ETHICS AND GRIEVANCES.

To the Georgia Bar Association:

Mr. President: Your Committee on Legal Ethics and Grievances beg leave to submit the following report:

Since the last meeting of the Association the Chairman of your Committee has received several charges and complaints against members of the Bar of this State, one only being a member of this Association. Happily this was settled before formal investigation by the Committee.

After correspondence with a former president of this Association on the subject of procedure, I, as Chairman of your Committee, informed the complainant that as to charges filed with this Committee against non-members of this Association, the Committee had heretofore consistently declined to entertain complaints against members of the bar who are not members of this Association. The complaint against two attorneys was on account of collections entrusted and made, unreasonable delay and withholding remittance to client. The complaint against a third attorney charged generally—only—“unprofessional conduct.”

In this connection your Committee noted with pleasure the following from one of the complainants hereinbefore referred to: “We are very much pleased to report the fact that this matter has been settled, and that we therefore withdraw our complaint. We realize, that while your organization has been created to promote the interests of its attorney members, we take it also that your organization is anxious to discourage and discountenance conduct of this kind. We do not resort to the Association until all efforts prove of no avail.”

Attention is called to the following interesting copy of com-

munication from a distinguished member of this Association, addressed to the Chairman of this Committee:

"March 1, 1916.

"Dear Sir: From some repeated experiences with members of the bar who need educating along that line, I am prompted to ask you to consider a deliverance by your Committee at the next meeting on the subject of an attorney going to the opposite party instead of to his counsel to discuss the case, make propositions of settlement, etc."

"March 21, 1916.

"Dear Mr. Hutchins: I found after looking over the Code of Ethics again that the subject I wanted a deliverance about is covered already. I do not know how I managed to overlook it before."

Ignorance of ethics and right conduct in the legal profession of Georgia is inexcusable, and education therein is amply and fully afforded every lawyer by the "Canons of Professional Ethics" of the American Bar Association, adopted and published by this Association in every annual report; which is but an enlargement of a briefer, but no better Code of Duty and Ethics than has been contained in all of the Codes of Georgia since 1863. So whenever in doubt or semi-darkness as to professional conduct or duty, let every member but pick up his "Key Number," insert and open his Canons of Ethics, and there flashes light and rules for good conduct and "safety first" for his guidance and protection.

From an examination by the Chairman of your Committee of every report of the Association since 1895, in only two instances during these years have complaints been filed with this Committee against a member of the Association.

Your Committee, therefore, notes with satisfaction and the organization is to be felicitated upon the truth and the proof of the fact that the Association continues to stand for the best ethics and traditions of the profession.

Respectfully submitted,

N. L. HUTCHINS,

Chairman.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

Mr. President:

"Old is the song I sing,
Old as the hills,
Old as the chickens the *khitmutgars* bring,
Old as my unpaid tailor's bills."

The above, it may be explained, is quoted from Kipling, and the "chickens" therein referred to are the feathered, biped kind, known also as fowls, and not the other kind that are never old. I might also add that the last simile in the quotation is not taken personally by the Chairman.

The object of this quotation is to call attention to the fact that for at least eighteen years last past one Committee on Legal Education and Admission to the Bar after another, and year after year, has rendered its report to this Association, all of them urging or suggesting reforms, and often recommending the same reforms, none of which have been carried into effect. There has been no change in the requirements as to admission to the bar of this State since 1897.

The Chairman communicated with the other members of the Committee, four in number, asking them for any suggestions as to what the report should contain. Two of them were heard from, both in substance putting it up to the Chairman to make the report. Of the two members not heard from, it is to be noticed that one of them has, during his long term of service at the bar, been a member of this Committee previously, and no doubt he feels the futility of making recommendations that will not be carried into effect; so that what is here stated is but the personal expression of the Chairman of the Committee.

In the first place, the Chairman suggests that there is need

of reform, and he believes that a very large majority of the bar will agree with him in this general statement.

As the law now is, any male person, whether a citizen of this State or an alien who has been a resident of the State two years, and who has declared his intention to become a citizen, can be admitted to the bar of this State. An alien under like circumstances cannot become a voter, he cannot hold office, but he can enjoy an equal or greater privilege, without ever becoming a citizen. He becomes an officer of court, he takes an oath to support the Constitution of this State and of the United States, while at the same time owing allegiance to some foreign government, prince or potentate. This should not be—there should be no dual allegiance possible. This may or may not be an important matter at this time, but a situation might arise where it would become of considerable importance. In any event, such a condition is wrong in principle. Then again, an applicant should at least have attained his legal majority before his admission. This might work a hardship in some cases, but on the whole it would have a good effect in that it would make for more legal study and learning on the part of the applicant.

Another requirement is, that the applicant should have a certificate from two practicing members of the bar of the State, as to his moral character, and also certifying to the fact that they have examined the applicant upon the various branches of the law and deem him qualified for admission to the bar. The last part of this certificate is not of great importance, as the applicant must nevertheless stand his examination or get a law school diploma. But the matter of character is of great importance. Any two attorneys of the bar of this State can certify to the moral character of the applicant, but it may be assumed that all attorneys are not of themselves of such good moral character as to qualify them to be judges of another's character. Would it not be better for the judge who holds the examination to make inquiries from reliable sources, and that he should then be required to certify that he believes from a careful investigation made, that the

applicant is of good moral character, and well qualified in that particular to become a member of the bar?

The law should go further and require that the applicant should study a code of ethics, for example, the code formulated by the American Bar Association, and the examination prepared by the Board of Examiners should be on this code as well as on the other branches of the law now prescribed.

It has often been recommended by this Committee that all applicants for admission, whether graduates of law schools or not, should stand the examination prescribed by the Board of Examiners. It seems and has always seemed to the Chairman that to state this question is to argue it. There can be no good reason to the contrary. If graduates of the law schools are properly prepared, they should have no difficulty in passing the examination.

The truth is, that there are now too many lawyers. You may search the State from corner to corner, and nowhere will you find a community that complains of a scarcity of lawyers. The result of this situation is, that many who are admitted to practice abandon the profession after a short and dismal trial, thus wasting time that might have been devoted to more gainful occupations. Others succeed so poorly that through the temptation that comes from lack of success they fall into questionable and unethical methods in the effort to obtain more business. Thus they become the means of bringing the profession into disrepute.

To relieve this situation, it might be suggested that there be a "closed season" for a period of time so far as admission to the bar is concerned, and at the same time an "open season," when every sportsman would have the privilege of going gunning for any one caught in the act of studying law with the view of becoming a lawyer.

It is of prime importance to lawyers as good citizens to see to it that the rights and property of the laity must be protected. The question arises, when should a young lawyer be turned loose on such rights and property? Of course, the obvious answer to this is, that unless the beginners have clients

to practice on, they will never acquire that proficiency that will justify their getting clients. In replication to this, it might answer to say that no attorney should have anything to do with a case involving more than one hundred dollars, unless and until he shall have been for at least three years a member of the bar, thus "localizing the damage" as they say at the battle front in Europe when they dig the trenches in zig-zag fashion.

Respectfully submitted,
R. D. MEADER, Chairman.

REPORT OF THE COMMITTEE ON FEDERAL LEGISLATION.

To the Members of the Georgia Bar Association:

Your Committee on Federal Legislation beg to report as follows:

So far as we can ascertain, there has been no Federal legislation of any importance that has been passed since the last meeting of your Association.

A bill to amend the law against the interlocking of bank directorates, relieving the original bill of too drastic provisions is pending and will probably be passed within the near future.

There is another bill pending, known as the "good roads bill," which is now, or was a few days ago, pending in conference between the two houses. As we learn, the probabilities are that it will be adopted substantially in the form of the Senate bill. Those who think that the Congress of the United States ought to pass laws of this sort applaud the measure as being one that promises much practical good.

We learn that the "rural credits" measure, which has passed both houses of Congress, will probably be agreed on in conference within the next few days.

The "army appropriation bill" is important, particularly the section which contains a provision for a government nitrate plant and the production of nitrate necessary for the manufacture of powder and fertilizers. This will probably be passed within a few days.

Between the sessions of 1914 and 1915 there was important Federal legislation passed which has not heretofore been noticed. We call attention to the following:

1. An Act of September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes." You are familiar with the

general idea and policy of this legislation and this report need not go into details.

2. The Act of March 4, 1915, amending the interstate commerce legislation, defining the liability of the initial carrier of goods, liability for loss occurring on connecting roads, limitation of liability and notice of claims against the carrier.

3. The Act of January 28, 1915, amending the Judicial Code of Laws, as to the jurisdiction of the Circuit Courts of Appeal and providing, among other things, that "the judgments and decrees of the Circuit Courts of Appeal in all proceedings and other cases arising in the Bankruptcy Act and in all controversies arising in such proceedings and cases shall be final" save when the *certiorari* proceedings provided for, and that "no court of the United States shall have jurisdiction of any action or suit by or against any railroad company upon the ground that said railroad company was incorporated under an act of Congress."

4. The Act of March 3, 1915, also amendatory of the Code, which provides, in case it be found that a suit at law should have been brought in equity, or one in equity should have been brought in law, for amendments meeting objections of this character and securing a trial on the merits notwithstanding these objections. "That in all actions at law equitable defense may be interposed by answer, plea or replication, without the necessity of filing a bill on the equity set of the court." That where a suit is brought in any district court or removed thereto and the jurisdiction of the court is based upon diverse citizenship and such diverse citizenship in fact existed at the time the suit was brought or removed, though defectively alleged, either party may amend at any such of the proceedings and in the Appellate Court, upon such terms as the court may impose, so as to show on the record such diverse citizenship and jurisdiction and thereupon such suit shall be proceeded with, the same as though diverse citizenship had been fully and correctly pleaded at the inception of the suit, or if it be a removed case, in the petition for removal.

5. The Act of March 3, 1915, providing for the appoint-

ment of an additional district judge for the Southern District of the State of Georgia.

6. The Act of October 15, 1904, with regard to the granting of preliminary injunctions and restraining orders, is also important.

A report would be too long that would go into the details of the legislation referred to. It is sufficient, we take it, to call attention to such legislation.

Respectfully submitted,

SAM'L B. ADAMS, Chairman.

JOS. W. BENNET,

T. A. HAMMOND.

**REPORT OF LEGISLATIVE COMMISSION
ON
REGISTRATION OF LAND TITLES.**

At the ~~urgent~~ request of the Executive Committee, Judge Arthur G. Powell, Chairman of the Legislative Commission on Registration of Land Titles, consented to present the Report of that Commission as a part of the regular program at the meeting of the Association. For want of time, the Report could not be presented by Judge Powell as originally intended by the Executive Committee. The Report was filed, however, as an official document of the Association. The Secretary was directed to have one thousand copies of it printed and to distribute these to the members of the Association, sending all the copies left after such distribution to Judge Powell for his use as Chairman of the Commission. This was done. The Secretary was also instructed to publish the Report in the Report of the Association. It is accordingly presented in full in the following pages. For the discussion as to the Report, see pages 28-31.

REPORT OF THE COMMISSION APPOINTED UNDER JOINT RESOLUTION OF THE GENERAL ASSEMBLY TO RECOM- MEND A SYSTEM OF LAND REGISTRATION.

The Commission was appointed under a joint resolution of the General Assembly, approved August 14th, 1914. (See Acts 1914, p. 1248.)

The first meeting of the Commission was held in May. A number of subsequent meetings were held. The Commission invited an expression of views from those interested pro and con and a number of prominent citizens appeared and made talks on the various phases of the subject. A number of others furnished useful papers. Mr. Barfield, one of the present representatives from Bibb County, and Hon. T. S. Felder, former Attorney-General, both of whom had devoted considerable study to the subject, gave valuable assistance to the Commission. As guides, we had before us the land registration Acts of a number of the States, as well as what is known as the "American Uniform Land Registration Act," which was presented at the 1914 Annual Conference of Commissioners on Uniform State Laws.

The subject of land titles is one that commands almost universal attention and interest. Land is the most valuable commodity of any State. Title to land should be the surest and safest of all investments; but practical experience has demonstrated that, under our present laws on the subject, this is not the case.

The ownership of land should be a sure and easy basis of credit; but, owing to our present method of dealing with land titles, the borrowing of money on land is a slow and expensive process.

Every doubt as to title makes land less valuable. The necessity of investigating and reinvestigating the title from time to time, as it is sold or given as security, detracts from its choiceness as an investment. Too frequent have been the cases where men have invested savings of years in lands and lost them through some unsuspected defect of title.

The prime object of the Commission's investigation, therefore, has been to devise a method of making titles safer.

Many States have deemed the element of safety so important that they have enacted, and put into effect, systems that are very cumbersome and expensive in their operations. The Commission has put much thought upon the planning of a system which will be neither cumbersome nor unduly expensive, and still will make titles safe and keep them safe. It hopes that it has done so, and a proposed bill is

presented as a part of this report. Its general outlines have been borrowed from the laws in force in the various States and from the provisions of the American Uniform Land Registration Act; but many modifications have been made in order to adapt it to our local laws and conditions.

The general outlines of a land registration system readily present themselves to the minds of most lawyers and of those business men who have had experience in land transactions. First, there should be a proceeding by which the claimant to the land gives notice to the world that he claims the land and calls upon all persons to show cause why his title should not be confirmed; followed by the judgment of a competent court, confirming his title as against every other claimant. Then there must be some system by which the title thus confirmed may be transferred and otherwise dealt with in the course of years, so that each subsequent holder, and every other person acquiring an interest therein, may hold with like security. This involves a continuous and permanent system of registration.

Easy as it is to organize in one's mind the general plan of such a system, the outlining of details through which the system must work is fraught at every point with difficulties, both practical and constitutional.

For example, the proceedings by which the title is to be originally confirmed must be such as to guard carefully against the opportunity of the system's being used by dishonest persons as a means of stealing the lands of others. This is a practical question. No decree or judgment can be rendered, so as to bind the world unless such legal notice is given as will afford any and all persons an opportunity to be heard. This is a constitutional question. It is the consensus of all legislative opinion on the subject, as expressed in the Acts of the various States, that some provision by way of an insurance fund should be made to compensate those who, by the operation of the system, have lost lands or some interest therein, without fault or negligence on their part; and when such a fund is provided for, it is to the interest of the State to see that the law on the subject affords little or no opportunity for such a case arising. This is a financial question. It is believed that the proposed bill herewith submitted has so safeguarded the original proceedings to confirm and register a title as to leave but little opportunity for "land larceny," as to meet all constitutional requirements, and as to reduce the probability of recourse on the insurance fund to a minimum.

The system proposed in the bill herewith presented forces no man to register his land; it is purely voluntary. Any landowner may avail himself of the benefits of the system; no landowner is required to do so.

Most States provide that when once land is placed under registration it shall permanently remain so, and that all subsequent sales, etc., must, likewise, be registered. The Commission thought it wise to provide, in the present bill, for a means by which a registered title might be freed at the instance of any subsequent owner, from requirements of registration. The chief reason for this provision is that every restraint upon alienation tends to diminish, what might be called, the sale-value of land. It will likely be a long time before all people will prefer registered to unregistered land. This may be folly, but it is that form of folly which determines choice; and every man is free to choose whether he will buy registered or unregistered land. If there were no provision for freeing registered land from registration, the registered land owner, wishing to sell his land, would find himself confined as to prospective buyers to those who wish to own registered lands. Under the present proposed bill the registered land owner may offer it to both classes of buyers; for, if he meets with a prospective buyer who does not wish to own registered land, he merely goes through a short, inexpensive process, and the land is free from subsequent registration requirements; but even then the advantages of the previous registration is not lost, for even though a title be freed from subsequent registration, the prior registration is conclusive evidence that the last registered owner was the true owner, so that every subsequent purchaser is relieved from tracing the abstract further back.

Furthermore, land owners, not being familiar with land registration, would hesitate to register their land if, when once put under registration, it could never be freed therefrom, while they would be much more willing to try the experiment, knowing that if it did not work satisfactorily the land could be placed again under the old system.

The methods by which transactions in registered land subsequent to the initial registration are dealt with vary in the different States, but the same general principles underly them all. All the systems provide for a public record on which every title brought under the Act is registered in the name of some owner. The owner is given a certificate showing that he is the owner, and showing what incumbrances, if any, are on the land. If the owner wishes to sell the land, he merely transfers the certificate and the person to whom he transfers it goes to the court-house and causes the land to be registered in his name, and the old certificate is surrendered and a new certificate is issued to the purchaser. Certificates for registered lands are as negotiable as bank stock or other legal securities. They may be transferred in whole or in part as security for debt. The holder of a certificate for a tract of land who wishes to borrow money on it can take it to the bank and

transfer it in blank and attach it to his note as collateral security, as if it were a share of stock or a negotiable bond. Or he may keep the certificate and give his creditor a mortgage on it; the mortgage being noted in the certificate and on the title register.

The advantage of being able to handle lands in this fluid manner is almost beyond the comprehension of most of us, who have been accustomed to the old and awkward way of handling similar transactions.

It is the experience of most States adopting land registration systems that the people are slow at first in taking advantage of the system. This is largely due to that skepticism of the untried and the unfamiliar which pervades all human nature. But a study of the Acts of the various States has convinced the Commission that there is an additional reason; the Acts are not simple enough to be understood except by those of technical legal training. Many of these Acts are models of conciseness; but they are not explicit enough; those who drew them sacrificed clearness for the sake of brevity. An Act dealing with so technical, intricate and important a subject as land titles should be drawn, of course, in most carefully chosen language. Every word must be studied with its ultimate legal effect in view. Still, when one of the objects of the Act is to outline a new and unfamiliar procedure on an important subject, it should enter enough into descriptive details to enable those who are to work under it readily to know just what to do in each case and how to do it.

The transactions which are likely to arise in the life of a land title are multifiform. In the history of a land title we find it affected by deaths, marriages, trusts, disabilities, by odd and unusual provisions inserted by the whim of some eccentric owner, by debts, liens, encumbrances, tax sales and what not. A system which does not provide for all these things, and provide for them in an understandable way is not likely to work smoothly in its earlier days.

Reference to these things has been made to explain why the proposed bill herewith submitted is so long. An examination of the proposed bill will show that, after dealing in a somewhat technical way with the various matters of substantive law and procedure, the bill goes on to describe, in detail, just how each transaction is to be handled. A large part of the bill is taken up in prescribing forms. In the first place, these forms being prescribed will tend to make the operations of the Act uniform throughout the State; but there is the further advantage that they will show to the officers charged with the administration of the Act and to the members of the legal profession and to the public just how every thing is to be done.

While at first blush the system here proposed may seem intricate, still it is the belief of the Commission that a full and careful reading of the entire bill will show that it is very simple.

It is intended to provide:

(1) A cheap, but thorough and comprehensive, procedure by which any one who really owns a tract of land may have his title confirmed and established by a decree which will stand in any court just as if it were the State's plat and grant issued to him, and at the same time will make it extremely difficult for one who is not the true owner to register, and thereby steal some one else's land.

(2) A system of so registering the title that everything connected with it or affecting it in any way, such as mortgages, liens, home-steads, encumbrances and like matters, will appear on a single page.

(3) Ownership of land by a certificate, which is conclusive as to the ownership, but which shows on its face all encumbrances put on the land by the owner, and which, by being taken to the clerk's office at any time and stamped with a single entry, will show that there are no judgments or encumbrances against the land, other than those shown on the face of the certificate.

(4) A method by which land can be transferred almost as simply as ordinary commercial paper and by which it can be used as collateral with as great facility as if it were a stock or bond of equal value.

(5) A system which, while it does not altogether free the title from those troublesome and oftentimes expensive proceedings which are brought about by the death of an owner or other involuntary transmissions, simplifies these matters and provides a sure way of ascertaining at all times who is the true owner, notwithstanding the entanglements that may have occurred.

(6) A system that is simple, though comprehensive.

(7) A system that is purely voluntary.

ROBERT N. HOLTZCLAW, Perry, Ga.

S. M. TURNER, Quitman, Ga.

ARTHUR G. POWELL, Atlanta, Ga.

Commissioners.

A BILL

To be entitled an Act to provide for the assurance, registration and transfer of land titles, and interests therein, and for other purposes.

Be it enacted by the General Assembly of Georgia, and it is enacted by authority of the same:

Section 1. This Act shall be known as "The Land Registration Act," and may be cited or referred to by that name.

Sec. 2. For the purpose of enabling all persons owning real estate within this State to have the title thereto settled and registered, as

prescribed by the provisions of this Act, the superior court of the county in which the land lies shall have exclusive original jurisdiction of all petitions and proceedings had thereupon.

Sec. 8. As used in this Act, the following words shall have the following meanings, unless the context plainly indicates otherwise:

The words "registered land" shall include any estate or interest in lands which shall have been registered under the provisions of this Act.

The words "the court" shall mean the superior court of the county wherein the land lies.

The word "clerk" shall mean the clerk of the superior court of the county wherein the land lies, and shall include his lawful deputies, and any person lawfully acting as clerk under the provisions of the general laws of this State, or of this Act.

The words "judge" or "judge of the court" or "judge of the superior court" or "judge of the superior court of the county where the land lies," or words of similar purport, shall be held and construed to mean, embrace and include any judge of the superior courts of this State presiding in the superior court of the county where the land lies; and, while it is intended that, as a usual matter, the judge of the superior courts of each circuit shall be the judge who shall act upon and sit in the various matters arising in that circuit with which the judges of such courts are charged under the provisions of this Act, still as to such matters any judge of the superior court shall have jurisdiction to perform the functions of judge under this Act; and in the event that the judge of the superior courts of the circuit in which the transaction or matter arises is disqualified, absent from the circuit, ill, dead, or from any other cause cannot act in the matter, it shall be the duty of any other judge of the superior court of the State, to whom the matter is presented, to act in the matter to the same extent as if the same arose in one of the counties of his own circuit; and, furthermore, any judge of the superior court may in any matter arising under this Act, upon the request of the judge of the superior court of the circuit in which it arose, act upon it as if it arose in his own circuit.

The words "voluntary transaction" shall be construed to embrace and mean all contractual and other voluntary acts or dealings (except by will) by any registered owner of any estate or interest in land with reference to such estate or interest and any right of homestead or exemption therein; and the words "involuntary transaction" shall be construed to embrace and mean all other transmission of registered land or any interest therein and all other rights or claims, judicial proceedings, liens, charges or encumbrances not created directly by contract with the registered owner, but arising by operation of law or of equitable principles, dower, the exercise of the right of eminent

domain, delinquent taxes and levies, and all like matters affecting registered land or any interest therein.

Sec. 4. The proceedings under any petition for the registration of land, and all proceedings in the court in relation to registered land shall be proceedings *in rem* against the land, and the decree of the court shall operate directly on the land, and vest and establish title thereto in accordance with the provisions of this Act, as well as upon all persons who are parties to said proceedings, whether by name or under the general designation of "whom it may concern."

Sec. 5. Suit for registration of title shall be begun by a petition to the court by the person or persons or corporation claiming, singly or collectively, to own, or to have the power of appointing or disposing of an estate in fee simple in any land, whether subject to liens, encumbrances or lesser estates or not. Infants and other persons, under disability, may sue and defend by guardian, guardian *ad litem*, next friend, or trustee, as the case may be. Except as otherwise provided, the suit shall be subject to the general rules of equity pleading and practice.

Sec. 6. Any person in the possession of lands within the State, claiming an interest or estate less than the fee therein, may have his title thereto established under the provisions of this Act, without the registration and transfer features herein provided.

Sec. 7. The petition, and any amendment thereto, shall be signed and sworn to by each petitioner, or in the case of a corporation, by some officer thereof, or in the case of a person under disability, by the person filing the petition. It shall contain a full description of the land and its valuation and its last assessment for county taxation; shall show when, how, and from whom it was acquired, a description of the title by which he claims the land, and an abstract of title, and shall state whether or not it is occupied; and shall give an account of all known liens, interests, and claims, adverse or otherwise, vested or contingent. Full names and addresses, if known, of all persons that may be interested in any wise, including adjoining owners and occupants, shall be given. A non-resident petitioner shall appoint a resident agent or attorney upon whom process and notices may be served. The description of the premises to be given in the petition shall be in such terms as shall identify the same fully, and shall be such a description as shall tend to describe the same as permanently as is reasonably practicable under the circumstances. If it be in a portion of the State in which the land is by State survey divided into land districts and lot numbers, in the petition there shall be stated the number of the land district and of the lot number or numbers in which the tract is contained. The judge, on his own motion, or upon recommendation of the exam-

iner, may, before passing a decree upon any petition for registration, require a fuller and more adequate description, or one tending more permanently to identify the tract in question, to be included into the petition by amendment, and if, in the discretion of the court, it shall be necessary, may, for that purpose, require a survey of the premises to be made and the boundaries marked by permanent memorials. The acreage or other superficial contents of the tract shall be stated with approximate accuracy, and where reasonably practicable the court may require the metes and bounds to be stated.

Sec. 8. Any number of separate parcels of land, claimed by the petitioner under the same general claim of title, and lying in the same county, may be included in the same proceeding, and any one tract may be established in several parts, each of which shall be clearly and accurately described and registered separately.

Sec. 9. The petition shall include as defendants all persons who, by the petition, are disclosed to have any lien, interest, equity or claim adverse to the petitioner or otherwise, vested or contingent, upon said land or any interest therein and shall also include as defendants all other persons "whom it may concern."

Sec. 10. Upon such petition being filed in the office of the clerk of the superior court, in the county where the land lies, the clerk shall issue a process directed to the sheriffs of this State and their lawful deputies, requiring all of the defendants named in the petition, and all other persons "whom it may concern" to show cause before the court on a named day not less than forty or more than fifty days from the date thereof, why the prayers of the petition should not be granted, and why the court should not proceed to judgment in such cause; and shall make the necessary copies of the petition and process for service. Within thirty days from the time of the issuance of process, a copy of the petition and process shall be served, in like manner as ordinary process is served in ordinary actions at law, upon each party named as defendant in the original petition, if a resident of this State. Second original and copies may issue and be served in like manner as second originals are issued and copies served in ordinary actions. The clerk of the superior court shall also cause to be inserted in the newspaper in which the advertisements of sheriff's sales in the county are advertised for four insertions in separate weeks, a notice addressed "to whom it may concern," and also to each person named in the petition as a defendant who resides beyond the limits of the State, or whose place of residence is unknown, and giving notice of the filing of the petition by the petitioner, and a description of the land which petitioner seeks to register, and warning them to show cause to the contrary, if any they can before the court on the

date named in the process. The judge of the court may grant additional time for service or return of the process, and may provide for service in cases not herein provided for wherever the exigencies of justice may so require. Wherever the petition discloses, or it otherwise becomes disclosed to the court in the progress of the proceedings that any non-resident is interested, such non-resident, if his post office address be known, shall be notified also by the clerk of the court mailing to him a copy of the petition and process by registered mail to the post office address as the same may be disclosed to the court through the petition or other proceedings in the case. Guardians *ad litem* shall be appointed for infants and other persons under disability, in like manner as they are appointed in equity cases in the general practice in this State.

Sec. 11. If the petition discloses that it involves the determination of any public right or interest of this State, or of any county or municipality thereof, the process or notice, in order to affect the State or the county or the municipality, shall be served upon the Attorney-General, in the case of the State; upon the ordinary, in the case of a county (or, if the ordinary be disqualified, upon the clerk of the superior court); or upon the mayor of the municipality, in the case of a municipality (or, in case there is no mayor or the mayor is disqualified, upon a majority of the members of the council or other governing body of the municipality).

Sec. 12. Any person entitled to notice or service of process under this Act may waive such notice or service by a written acknowledgment of service, or waiver of service, entered upon the petition or entitled in the cause and signed by him in the presence of the judge of the superior court or of the clerk of the superior court of the county, or the examiner, his signature being attested by such officer.

Sec. 18. The court, before passing the decree authorizing the registration of land, shall first satisfy himself that publication of notice and service of process, as herein required, have been made. After judgment the entry of service by the sheriff or his deputy shall be conclusive evidence and shall not be subject to traverse, nor shall any acknowledgment of service be subject to traverse. The recital of service of process and of the giving and publishing of notices, contained in the decree or final judgment in the cause, shall be conclusive evidence that such service, publication and notice have been legally given; provided, however, that nothing herein shall prevent any person aggrieved from having his right of action against any sheriff who makes a false return of service, or against any clerk or examiner who falsely attests a waiver or acknowledgment of service, or any clerk who fails to publish the notice or to mail the notices as required by this Act.

Sec. 14. A notice similar to the notice directed to be published, as provided in the tenth section of this Act, shall also be delivered by the clerk to the sheriff of the county, or one of his lawful deputies, and the sheriff, or his lawful deputy, shall, within thirty days from the date the petition is filed, post the same upon the land in some conspicuous place; and if there be more than one tract of land enough notices shall be furnished by the clerk to the sheriff or his deputies, and he shall post the same upon each tract of land included in the petition. The sheriff shall also, within said thirty days, go upon the land and ascertain and make official return to the court, stating the names of each and every person above the age of fourteen years actually occupying the premises, together with the post office addresses of such persons. Upon such return being made, the clerk shall thereupon mail, by registered mail, to each person so upon the land a copy of the petition and process, or, if the petitioner so desires, he may require such persons, so upon the land, to be served by the sheriff or his deputy. The clerk shall make entry of having mailed the notices unless the sheriff shall have made the service, in which event the sheriff shall make the return. The notices provided for and to be given under this and other sections of this Act shall stand as personal service of process, and shall be conclusive and binding on all persons so notified, and on all the world. Appearances or pleading in the case shall constitute a waiver of process and service, and of notice and of any defect therein.

Sec. 15. The judge of the superior court of each judicial circuit in this State shall appoint at least one master, or auditor, who shall be known as the examiner, and who shall discharge the duties provided herein for the examiner, but whose relation and accountability to the court shall be that of auditor or master in the general practice existing in this State; and the judge shall appoint as many more examiners in the circuit as the public convenience in connection with the carrying out of the provisions of this Act may require, and may, in any case, appoint a special examiner. Such examiners shall hold office at the pleasure of the judge and shall be removable at any time with or without cause. Each examiner so appointed must be a competent attorney at law, of good standing in his profession, and of at least three years' experience in the practice of law. Each examiner shall take and file in the office of the clerk of the superior court of the county of his residence, along with the order of his appointment, an oath or affidavit substantially in the form herein prescribed.

Sec. 16. Upon the filing of a petition, as provided in this Act, the clerk shall at once notify the judge, who shall refer the cause to one of the general examiners, or to a special examiner. It shall thereupon

become the duty of such examiner to make up a preliminary report containing an abstract of the title to the land from public records and all other evidences of a trustworthy nature that can reasonably be obtained by him, which said abstract shall contain full enough extracts from the records and other matters referred to therein, to enable the court to decide the questions involved; also a statement of the facts relating to the possession of the lands; also containing the names and addresses, so far as he is able to ascertain, of all persons interested in the land, as well as all adjoining owners, showing their several apparent or possible interests and indicating upon whom and in what manner process should be served or notices given, in accordance with the provisions of this Act. The preliminary report of the examiner shall be filed in the office of the clerk of the superior court, on or before the return day of the court, as stated in the process, unless the time for filing the same shall be extended by the court; and the said report shall be *prima facie* evidence of the contents thereof.

Sec. 17. If it is disclosed, from the report of the examiner, that other persons than those who shall have been notified under the provisions of this Act are entitled to notice, a copy of the petition shall be served upon such person in like manner as other persons named as defendants in the petition are required to be served by this Act, and, in addition to the copy of the petition, there shall be attached a notice from the clerk directed to such person, informing him that he shall appear and show cause against the judgment being rendered in the case, if any he has, within ten days from the date of the service of the notice. However, nothing herein shall be construed to require the giving of additional notice by publication, otherwise than in this Act provided for, to non-residents or persons who, by reason of absence from the State, or by reason of their whereabouts being unknown, can not be found and served with process.

Sec. 18. Any person, whether notified or not, may become a party to the proceeding for the purpose of filing objections to the granting of the relief prayed for in the petition, or any part thereof, by filing in court an answer, showing that he claims some interest in the premises, and the grounds of his objection; or he may file a cross action praying that the title to the land, or some interest therein, be decreed to be in him, and registered accordingly.

Sec. 19. As soon as practicable, after the return day stated in the process, the examiner shall proceed to hear evidence and make up his final report to the court, unless it shall have developed from the preliminary report filed by him that persons other than those named as defendant in the original petition were entitled to service or notice, in which event he shall not begin the hearing until after ten days

from the date of the service of notice upon such persons. He shall give notice of the time and place of hearing to the petitioner and to such persons as shall have filed any pleading in the case.

Sec. 20. At the time and place set for the hearing the examiner shall, in like manner as other auditors or masters in chancery, proceed, with similar powers as to the compelling of the attendance of witnesses, the production of books and papers, and of adjournment and recessing, to hear all lawful evidence submitted. In addition thereto he is empowered to make such independent examination of the title as he may deem necessary. Upon his request, the clerk shall issue commission for the taking of testimony of such witnesses as, under the provisions of law on that subject, may have their testimony taken by interrogatories in ordinary actions. He shall also have the powers of a commissioner appointed by the superior court under Sections 5910 to 5917, inclusive, of the Civil Code of 1910. Within fifteen days after such hearing shall have been concluded the examiner, unless for good cause the time shall be extended by the judge, shall file with the clerk a report of his conclusions of law and of fact, setting forth the state of the title, any liens or encumbrances thereon, by whom held, the amounts due thereon, together with the abstract of title to said land, and any other information affecting its validity, and a brief, or a stenographic report of the evidence taken by him. He shall mail to each of the parties who have appeared in the cause notice of the filing of his report. Any of the parties to the proceeding may, within twenty days after such report is filed, file exceptions to the conclusions of law or of fact or to the general findings of the examiner. The clerk shall thereupon notify the judge that the record is ready for his determination. If the petitioner, or any contestant of petitioner's right, shall demand a trial by jury upon any issue of fact arising upon exceptions to the examiner's report, the court shall cause the same to be referred to a jury either at the term of court, which may then be in session, or at the next term of the court, or at any succeeding term of the court, to which the case may be continued for good and lawful reasons; but it shall be the duty of the judge to expedite the hearing of the case and not to continue it unless for good cause shown, or upon the consent of all parties at interest. The issue or issues of fact shall be tried before the jury, in the event jury trial is requested, upon the evidence reported by the examiner, except in cases where, under the provisions of law in this State, evidence other than that reported by the auditor may be submitted to the jury on exceptions to an auditor's report, and except further, that in the case the examiner has reported to the court findings of fact based on his personal examination either party may introduce additional testimony as to such facts,

provided that he will make it appear, under oath, that he has not been fully heard and given full opportunity to present testimony on the same matter before the examiner. The verdict of the jury upon the questions of fact shall operate to the same extent as it would in the case of exceptions to an auditor's report in an ordinary case in equity. In all matters, not otherwise provided for, the procedure upon the examiner's report and the exceptions thereto shall be in accordance with procedure prevailing in this State as to auditor's reports in equity and exceptions thereto. The right to grant a new trial upon any issue submitted to a jury and right of exception to the supreme court are preserved. The judge may re-refer or recommit the record to the examiner in like manner as auditor's reports may be recommitted in any equity cause; or he may, on his own motion, recommit it to the same or any other examiner for further information and report.

Sec. 21. No judgment or decree shall be rendered by default, so as to authorize any decree to be rendered without the necessary facts being shown.

Sec. 22. While the cause is pending before the examiner of titles, or at any time before final decree, the judge, or the examiner with the approval of the judge, may require the land to be surveyed by some competent surveyor, and may order durable bounds to be set and a plat thereof to be filed among the papers of the suit. But before such survey is made all adjoining land-owners shall be given at least five days' notice. The petitioner, or any adjoining owner, dissatisfied with the survey, may file a protest with the court, within ten days from the time the plat is filed, and thereupon an issue shall be made up and tried as in case of protest to the return of land processions.

Sec. 23. If in any case the petitioner so desires, or if the court is of opinion that the petitioner's title is not and cannot be made proper for registration, the petition may, with leave of the court, be dismissed without prejudice, on terms to be determined by the court.

Sec. 24. Amendments to petitions or other pleadings, or the severance thereof, including joinder, substitution or discontinuance of parties, and the omission or severance of any portion or parcel of the land, may be ordered or allowed by the court at any time before final decree upon terms that may be just and reasonable, and the court may require facts to be stated in the petition in addition to those prescribed by this Act. The examiner shall have these powers, subject to review by exception to his report.

Sec. 25. The land described in any petition may be dealt with, pending registration, as if no such petition had been filed, but any person who shall acquire any interest in or claim against any such land shall at once appear as a petitioner, or answer as a party defendant, in the

pleadings for registration, and such interest or claim shall be subject to the decree of the court.

Sec. 26. After the record shall have been perfected and settled the judge of the superior court shall thereupon proceed to decide the cause; and if, upon consideration of such record, the title be found in the petitioner, the judge shall enter a decree to that effect, ascertaining all limitations, liens, encumbrances, etc., and declaring the land entitled to registration accordingly as he shall find, and such decree shall be entered upon the minutes of the superior court and become a part of the records thereof. If, upon consideration of the record, he finds that the petitioner is not entitled to a decree declaring the land entitled to registration, he shall enter judgment and decree accordingly. If any person shall have filed a cross action praying for the registration of the title to be found in him, the judge may enter a decree to that effect, in like manner ascertaining and declaring all limitations, liens, etc., and declaring the land entitled to registration accordingly. If separate parcels are involved the court shall render separate decree as to each parcel; and the same shall be done where the petitioner has divided a tract into separately described parcels and has accurately described each parcel for separate registration.

Sec. 27. Every decree rendered, as herein provided, shall bind the land and bar all persons claiming title thereto or interest therein, quiet the title thereto, and shall be forever binding and conclusive upon and against all persons, including the State of Georgia, whether mentioned by name in the order of publication, or included under the general description, "whom it may concern." It shall not be an exception to such conclusiveness that the person is an infant, lunatic, or is under any disability, but such person may, in the manner provided, have recourse upon the indemnity fund hereinafter provided for, for any loss he may suffer by reason of being so concluded.

Sec. 28. The county commissioners, or other officer having charge of the county business, of each county shall provide for the clerk of the superior court in said county a book, in which he shall enroll and register and index all decrees of title, to be known as the "Register of Decrees of Title," also a book to be prepared, printed and ruled in substantially the manner hereinafter provided, to be called the "Title Register," in which said clerk shall enroll, register and index, as herein provided, the certificate of title herein provided for, and all subsequent transfers of title, and note all voluntary or involuntary transactions in any wise affecting the title to said land authorized to be entered thereon; and they shall, from time to time, furnish such additional books as may be necessary. Upon the registration of such decree and certificate of title, the clerk shall issue an owner's certifi-

cate of title, under the seal of his office, which shall be delivered to the owner, or his duly authorized agent or attorney.

Sec. 29. Every entry made in the Register of Decrees of Title, or in the Title Register, or upon the owner's certificate, under any of the provisions of this Act, shall be signed by the clerk and dated with the year, month, day, hour and minute, accurately stated.

Sec. 30. Whenever the whole of any registered estate is transferred or conveyed, the same may be done by a transfer or conveyance upon, or attached to, the owner's certificate of title, substantially in the form herein provided for. The same shall be signed and acknowledged or attested as if it were a deed to land, and shall have the full force and effect of a deed. Provided, that if the said sale or transfer be in trust, upon condition, with power to sell, or other unusual form of conveyance, the same shall be set out in said transfer, and shall be entered upon the Registration of Titles Book as hereinafter provided. Upon presentation of the said transfer, together with the owner's certificate of title, to the clerk, it shall be duly noted and registered in the Title Register, in accordance with the provisions of this Act, and, the certificate of title on the Title Register, and the owner's certificate of title so presented, shall be canceled and a new certificate of title in the name of the transferee shall be registered on the Title Register, and a new owner's certificate of title shall be issued to the transferee, which new certificates shall refer to the former certificates just canceled.

Sec. 31. Whenever a part of any registered land is transferred or conveyed, the same shall be by form substantially, as in case of a total transfer, but setting forth, particularly and specifically, the portion of the land transferred, if it be an undivided interest, or if it be a particular portion of the tract, describing the same accurately and definitely. In case an undivided interest is transferred, upon presentation of such transfer, together with the owner's certificate of title, the clerk shall not cancel the owner's certificate so presented nor the certificate of title on the Title Register but shall enter a notation of such partial transfer on the certificate of title, on the Title Register and on the owner's certificate; and said clerk shall also register upon the Title Register a certificate of title in the name of the grantee of the undivided portion of said estate so transferred and issue to him an owner's certificate correspondingly, setting out the part or amount of land transferred, as the case may be. If the transfer be of a divided part of the land the clerk shall first enter the fact of the transfer upon the certificate of title, on the Title Register, and shall cancel the certificate of title on the Title Register and the owner's certificate of title. Thereupon he shall register new certificates of title on the Title

Register, separately, the one in the name of the transferee, for the portion of the tract conveyed to him, and the other to the transferor for the portion retained; and the clerk shall also issue new separate owners' certificates accordingly. The said clerk shall note upon the Title Register and the owners' certificates the reference and cross references to the certificates herein referred to.

Sec. 32. Whenever the owner of any registered land shall desire to convey the same as security for debt, with power of sale without foreclosure, it may be done by a short form of transfer, substantially in the form hereinafter set forth. The same shall be signed and properly acknowledged or attested, as if it were a deed to land, and shall be presented, together with the owner's certificate to the clerk, whose duty it shall be to note upon the owner's certificate and on the certificate of Title in the Title Register the name of the creditor, the amount of debt, and the date of maturity of same, and showing that a creditor's certificate has been issued therefor, and when only a part of the registered estate shall be so conveyed, the clerk shall note upon the said book and owner's certificate the part so conveyed. The clerk shall retain, number and file away, the instrument of transfer and shall issue and deliver to the creditor what shall be known as a creditor's certificate, over his hand and seal, setting out the portion so conveyed. All registered encumbrances, rights or adverse claims affecting the estate represented thereby in existence at the time the creditor's certificate is issued shall be noted thereon.

Sec. 33. The creditor's certificate shall be assignable or negotiable to the same extent as the note or other evidence of indebtedness secured thereby may be, but assignments or transfers of the creditor's certificate need not be noted on the Title Register. A transfer or assignment of the indebtedness shall operate to transfer the creditor's certificate securing the same, in like manner and to the same extent as is set forth in Section 4276, of the Civil Code, relating to the case of transfer of indebtedness secured by mortgage, unless otherwise agreed between the parties. The creditor's certificate may be surrendered and canceled at any time by the owner thereof. It shall be the creditor's duty to surrender the same and give order for cancellation of the same when the debt is paid. If he refuses to do so he may be compelled by the court to do so, and in any proper case the judge may order a cancellation on the Title Register. Upon presentation of an order of cancellation, with the surrendered creditor's certificate, or upon presentation of the judge's order directing cancellation, the clerk shall enter a notation of the same in the Register of Titles and on the owner's certificate of title.

Sec. 35. If the debt secured by the creditor's certificate so issued, or

any part thereof shall be due and unpaid, the holder of said creditor's certificate may, after advertising the property for sale in the manner prescribed by law for advertising sheriff's sales of land, expose the same at auction before the court-house door of the county and sell the same to the highest and best bidder for cash. The sale need not be conducted by the creditor or holder of the creditor's certificate personally, but may be conducted through any agent or attorney. The holder of said certificate, his agent or attorney, shall thereupon make oath to the facts, and apply to the judge for an order of transfer to the purchaser. The application shall be accompanied by a certified copy of the certificate of title from the Title Register as of the date of the sale. The judge shall cause at least five days' notice to be given to the debtor and to any person who, according to the Title Register, shall have acquired any interest in the property subsequently to the issuance of the creditor's certificate; and if no objections are made, or after hearing, if objections be made, the judge shall grant an order of transfer with such directions for cancellation of other certificates and entries, and otherwise as shall be in accordance with the justice of the case, and with the spirit of this Act.

The proceeds of the sale shall be applied, first, to the payment of the costs of advertising the sale and obtaining the judge's order of transfer, then to the payment of the debt, and the remainder, if any, shall be paid to the debtor, or his order.

Sec. 36. Nothing herein shall prevent the owner from transferring his registered title as security for debt, or from causing the title to be registered in the name of the creditor by transferring to the creditor as if he were an ordinary vendee of the registered title; and if bond for title or bond to reconvey be given, the same may be noted on the certificate of title on the Title Register and on the owner's certificate, provided the same be attested or acknowledged as if it were a deed.

Sec. 37. In all voluntary transactions the owner's certificate of title must be presented, along with the writing or instrument filed for registration; and thereupon, and not otherwise, the clerk shall be authorized to register the transaction.

Sec. 38. Wherever a transfer, or transfer as security for debt, or mortgage, as to an estate in registered land, is executed in the form prescribed in this Act and the same duly registered and noted in the register of titles, and the same contains nothing more than the filling in of the blanks in said forms prescribed so that the entry of registration on the Title Register construed in connection with the prescribed form shows the full transaction, it shall not be necessary to record the transfer, security transfer, or mortgage, otherwise than by the registration in the Title Register; and such registration shall, for all pur-

poses, take the place of recordation as to such instruments so executed; and a certified copy of such registration shall be admissible in evidence on like terms and with like effect as a certified copy of a deed, mortgage or other similar instrument is admissible under existing laws. In such cases the original instrument of transfer (together with the canceled owner's certificate), or original instrument of transfer as security for debt, or original mortgage, as the case may be, shall be numbered with the registration number of the title to which it relates, and carefully filed away; in such manner as to be of easy access, and preserved as a part of the records of the office of the clerk of the superior court. In case of a mortgage so executed the clerk shall, on request, make a certified copy and deliver to the mortgagee, and such certified copy shall stand for all purposes in lieu of the original and shall be original evidence to the same extent that an original mortgage ordinarily is, in any court. If the instrument of transfer be not in the short form herein prescribed, or if it contains any provisions not provided for in said form, or if it is executed for the purpose of transferring any estate or interest in the registered land in trust, or upon any condition, or upon any peculiar, unusual limitation, the details at variance with or additional to those provided for under the prescribed form need not be entered in full on the Title Register and the owner's certificate, but the clerk shall record such instrument in full on the deed book of the county in like manner as deeds to unregistered land are recorded, and shall after the general entry of the transfer on the Title Register and on the owner's certificate add thereto a notation that the same is "in trust," "upon condition," or "on special terms," as the case may be, followed by the words "See deed book (or mortgage book, as the case may be)page....." Like procedure shall be followed in case of a transfer to secure debt or a mortgage not following the form herein prescribed, but in such cases the clerk shall not retain the original instrument, but shall return the same to the creditor after it shall have been registered and recorded.

Sec. 39. All registered encumbrances, rights, or adverse claims affecting the estate represented thereby shall continue to be noted upon every outstanding certificate of title and owner's certificate, until the same shall have been released or discharged, unless the same shall relate to only a particular portion of the property, when the same shall be noted only upon such certificate and duplicate certificates as relate to that portion of the property.

Sec. 40. Every voluntary or involuntary transaction, which if recorded, filed or entered in any clerk's office, would affect unregistered land, shall, if duly registered on the Title Register, and not otherwise, be notice to all persons from the time of such registration, and operate,

in accordance with law and the provisions of this Act, upon such registered land.

Sec. 41. Except as herein otherwise provided, in cases of involuntary transactions, no transfer of the title shall be registered except upon an order granted by the judge of the court in the form substantially as that hereinafter prescribed.

Sec. 42. Lands and any estate or interest therein registered under this Act, shall, upon the death of the owner, testate or intestate, go to his personal representative in like manner as personal estate, and shall be subject to the same rules of administration as personalty, except as otherwise provided in this Act, and except that nothing herein contained shall alter or affect the course of ultimate descent under the statute of descents and distributions and the rights of dower, when duly registered, nor shall alter or affect the order in which real and personal assets, respectively, are now applicable in and towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of debts and legacies.

Sec. 43. Subject to the powers, rights and duties of administration, the personal representative of such deceased owner shall hold such real estate as trustee for the persons by law beneficially entitled thereto, but, unless otherwise entitled by law to commissions, shall be entitled to no commissions thereon, except in cases of necessary sales in due course of administration. And the heirs at law or beneficiaries aforesaid shall have the same power of requiring a transfer of such estate as if it were personal estate.

Sec. 44. Upon the grant of letters of administration or executorship by the court of ordinary and upon presentation of a certified copy of the same to the clerk of the superior court and the presentation of the owner's certificate the clerk shall make a special entry on the certificate of title on the Title Register showing the presentation of the letters of administration or executorship, the name of the representative, the court and county of his appointment, and the date of the letters and of the transfer of the title to the representative. The clerk shall thereupon cancel the certificate of title and the owner's certificate outstanding in the name of the decedent and issue to the administrator or the executor, as the case may be, a new owner's certificate. In the event the decedent was the owner of only a fractional undivided interest in the title and the outstanding certificate stood in the name of the decedent and others, or where, from any other cause, the decedent was not the sole owner of the certificate, the outstanding certificates shall, nevertheless be canceled, and a new certificate registered and new owner's certificate issued with the name of the personal representative substituted for the name of the decedent.

Sec. 45. In case the owner of registered land die intestate, and there is no administration upon the estate within twelve months from the date of his death, or in the event administration terminates without the land being disposed of, the heirs at law of such intestate, or any one or more of the persons who claim to be heirs at law of such intestate, may petition the superior court of the county to have their title by descent declared as to such registered land. In such application there shall be set forth the names of all persons who are alleged to be the heirs at law, and if all are not joined, process or notice shall be served, as in cases in equity, upon all not so joined. The petition shall be verified by the affidavit of one of the petitioners, shall set forth in detail the name and address, as last known, of the decedent, a statement as to whether he was married or single, or a widower; if married more than once, the names of all of his wives; the names of all children and descendants of children, if any, showing in detail whether the parents of such children are living or dead, and showing in detail how and wherein the persons who are alleged to be the heirs at law are in fact the heirs at law of such decedent under the rules of inheritance in this State. It shall also give the date of the death of the decedent and set forth that he died leaving no will and that, in the judgment of the applicant, there is no need for administration upon the estate. Upon such application being filed the judge shall thereupon grant an order setting the application down to be heard at the court-house in the county where the land lies on some day not less than thirty days from the date of the application, and calling on all persons to show cause before the court on that day why the persons named as heirs at law in the application should not be so declared to be by the judgment and decree of the court. A copy of the application and the order of the court thereon shall be published in the newspaper in which the sheriff's sales of the county are advertised in like manner as sheriff's sales are advertised. Upon the day named, unless the matter be continued by order or orders of the judge to some future time, the court shall proceed to hear and determine the question, together with all objections, if any, which may be filed, and to adjudge and decree that the alleged decedent is dead and that there is no administration on his estate, and that he left no will, and who are his heirs at law; unless it appears that the alleged decedent is not dead, or that there is administration upon his estate, or that an application for administration is pending, or that the decedent left a will, in either of which events the petition shall be dismissed. Upon granting an order of heirship the court shall thereupon order a transfer of the registered title from the decedent to the heirs at law to be registered, and upon production of the owner's certificate of the decedent, and the judge's

order for a transfer, the clerk shall register the transfer and cancel the certificate registered in the name of the decedent and the owner's certificate and issue a new owner's certificate in the name of the persons declared to be the heirs at law. In such an application, if the alleged heirs at law be of full age and under no disabilities, and the same shall so appear to the court, and it shall further appear that they have voluntarily partitioned the land in kind among themselves, the court may, in connection with the order of transfer, direct that the certificate standing in the name of the decedent be cancelled and that new certificates shall be registered and issue to each of the heirs for the particular parcel of land coming to each under the voluntary partition set forth in the application. If the decedent shall have left a widow the application shall disclose whether the widow has elected to take dower or to become an heir of the estate, and she shall be a party to the proceedings, and the court shall specifically provide what interest or estate she shall take under the decree of heirship and, except where, in the decree, the land is partitioned into separate tracts, the court shall, in the decree of heirship and in the order of transfer, specifically set forth (except in the case of sole heir) what undivided interest each heir shall take. In case the decedent be a female the procedure shall be similar, except in so far as the difference between the rights of the husband and wife upon the death of his spouse shall make changes necessary. Where the wife claims to be entitled to take possession of the estate without administration, under the provisions of sub-Section 1 of Section 3931 of the Code, the procedure shall be substantially in the same manner.

Sec. 46. Wherever a transfer of registered land shall have been made to heirs at law, or to the widow claiming to be the sole heir, as stated in the preceding section, if at any time thereafter a personal representative is appointed upon the estate of the decedent he shall not be entitled to have such registered land transferred to him for purposes of administration, but if it appears that the heirs have thereby appropriated to their use and ownership property which should have been appropriated to the purposes of administration the personal representative of the decedent shall have a right of action against the heirs for the value of the property so appropriated, the judgment in such action to be moulded according to the exigencies of the particular case in accordance with the principles of equity.

Sec. 47. Wherever an administrator shall have been appointed and shall have caused registered land to be transferred into his name and he stands ready to be discharged and it is not necessary to sell such registered land for the purposes of administration and it should properly go to the heirs at law of the decedent, he may institute a pro-

ceeding substantially similar to that prescribed in Section 45 of this Act for the ascertainment of the heirs at law and for an order directing the transfer of such estate from him to such heirs at law when so ascertained. In case any other trustee shall hold title where the beneficiaries of the trust are not definitely and particularly disclosed, and it becomes appropriate that they should be definitely ascertained, such trustee may, in like manner, petition the court, upon showing that the trust has become executed, for a decree settling and ascertaining who the beneficiaries are, and directing a transfer to such beneficiaries.

Sec. 48. In cases of transfers of registered land, or any interest therein, from wife to husband, or *vice versa*, the transfer shall not be entered nor made until the same shall have been approved by the judge of the superior court and the fact of such approval shall be entered upon the Register of Titles.

Sec. 49. Wherever, as the result of a proceeding in any court of law or in equity, it is adjudged that a transfer of registered land should be made, such transfer may be made by the clerk upon the production of a certified copy of such decree showing in what book and page of the minutes of the court that rendered it the decree is recorded, and an order of the judge of the superior court of the county in which the land lies directing such transfer to be made; and the certificate of title on the Register of Titles, and the owner's certificate, shall be canceled and new certificates shall be registered and issued accordingly. Production of the certified copy of the decree shall not be required when it is rendered in the same court as that in which the title is registered, but the clerk shall act upon the judge's order of transfer and the inspection of his own minute book.

Sec. 50. Wherever in any other case it is desired to have an involuntary transfer entered of record, application therefor shall be made to the judge of the court. The judge may hear the facts or, if he deems best, he may refer the application to an examiner of titles to make up and report the facts. He shall see to it that all parties at interest are given reasonable notice before any order of transfer is made. Wherever, in his judgment, the interests of justice so require he shall, before granting such order, cause notice of the application to be published in the newspaper in which the sheriff's sales of the county are advertised for not less than four insertions in separate weeks. Before granting such order directing the transfer he shall fully satisfy himself that all parties who have or may have an interest in the matter of the transfer have been notified, and in the case of minors or other persons under disability, that guardians *ad litem* have been appointed to represent their interests, and that there is no valid

reason why the order directing involuntary transfer should not be made, and thereupon he shall enter a decree or judgment upon the minutes of the court reciting the facts and that an order of transfer has been issued, and shall issue the order of transfer in substantially the form and manner herein prescribed.

Sec. 51. Any writing or instrument for the purpose of encumbering or otherwise dealing with equitable interests in registered land, or tending to show a claim of lien or encumbrance thereon or right therein may be noted on the certificate of title in the Title Register with such effect as it may be entitled to have.

Sec. 52. Wherever it is sought to have an involuntary transfer registered under the provisions of this Act, and the owner's certificate is not produced so as to be attached to the order directing a transfer, the court shall have the power to issue *subpoena duces tecum* or any other process designed to compel the production of the owner's certificate, including attachment for contempt, and if after the process issues the owner's certificate shall not have been produced, or it appears to the court that there is no practical means of compelling its production, the court may nevertheless grant the order of transfer, but shall cause the clerk to enter a cancellation of the certificate of title on the Title Register and to give notice once a week for four weeks in the newspaper in which the sheriff's sales of the county are advertised that such certificate has been canceled, the cost of making such advertisement to be deposited with the clerk before the judge grants the order of transfer without the production of the certificate.

Sec. 53. Any person having any interest in registered land whose name shall have been changed by marriage or other cause may, by petition to the judge of the court, and upon proof of the facts, obtain an order directed to the clerk to note the change of name upon the Title Register, and upon the owner's certificate upon the same being produced.

Sec. 54. No judgment, levy or other lien (except lien for taxes, as to which special provision is herein made) shall be effective against registered land so as to affect any person taking a transfer thereof or obtaining any right or interest therein unless and until a notation of such judgment or levy or lien be made upon the Title Register. The pendency of any suit affecting the title to registered land, or any interest therein, shall not be held to be notice to any person other than the actual parties to such suit unless a notation of the pendency of such suit be made upon the Title Register.

Sec. 55. Nothing herein shall prevent any transfer or other dealing with registered land from being attacked in a court of law or equity as having been made for the purpose of hindering, delaying or defraud-

ing creditors, provided, that the court having jurisdiction of the case, upon the trial thereof, shall find that the person taking the transfer, or the apparent beneficiary of such dealing, took the benefit of the same with knowledge of the fact that the intention of the transaction was to hinder, delay or defraud creditors, and provided further that none of the rights of innocent parties shall be affected thereby. If a court having jurisdiction of the case, upon such proceeding, shall find that any transfer or other dealing with registered land shall have been made for the purpose of hindering, delaying or defrauding creditors and that the rights of no innocent parties will be prejudiced by the court's judgment or decree, it shall be within the power of said court to pass such judgment or decree as will avoid such transfer or the effect of such other transaction as may have been made to hinder, delay or defraud creditors, and upon the decree or judgment of such court the judge of the superior court of the county where the land lies, upon application as hereinbefore provided, shall have the authority and power to direct such cancellations and transfers to be entered upon the Title Register and upon the owner's certificate as shall be necessary to carry the same into effect.

Sec. 56. Whenever a writing or record is filed for the purpose of transferring registered land in trust, or upon any condition or unusual limitation expressed therein, or where power is given to sell, encumber or deal with the land in any manner, no subsequent transfer or voluntary transaction purporting to be exercised under the powers given in such writing or instrument or record shall be registered on the Title Register or on the owner's certificate, except upon application to the court and order of direction from the judge to the clerk as to how the same shall be entered.

Sec. 57. It shall be the duty of every officer in this State charged with the collection of taxes or assessments which shall be a charge upon any registered land or any interest therein, if such taxes or assessments are not paid when due, on or after the expiry of the 31st day of December of the year in which such tax or assessment shall become due, to cause to be entered upon the certificate of title on the Title Register a notation of the fact that such tax or assessment on such registered land or interest therein has not been paid, and the amount thereof. Until and unless such notation is made such delinquent tax or assessment shall not affect any transfer or other dealing with such registered land, but the tax officer failing to perform such duty, and his surety, shall be liable for the payment of said taxes and assessments, with all lawful penalties and interest thereon if any loss is occasioned to the political body, be it State, county, municipality or other division, by which such loss is sustained.

Sec. 58. Whenever an owner's certificate of title is lost or destroyed, the owner, or his personal representative, may petition the court for the issuance of a duplicate. Notice of such petition shall be published once a week for four successive weeks in the newspaper in which the sheriff's sales of the county are published, and upon satisfactory proof having been exhibited before it that said certificate has been lost or destroyed, the court may direct the issuance of a duplicate certificate, which shall be appropriately designed and take the place of the original owner's certificate. Provided, that the court may in any case order additional notice to be given, either by publication or otherwise, before directing the issuance of a duplicate certificate, and provided further that in case the application is made by personal representative of a deceased person claiming that the certificate was lost or destroyed while in the possession of the decedent the notice of the petition shall be published once a week for eight successive weeks, instead of four, as required in other cases.

Sec. 59. The clerk of the superior court is charged with the primary duty of determining whether any instrument, writing or record or other matter is in proper shape for registration, and with the duty of correctly and legally making the registration, including all formal incidents thereto, and shall be liable to any injured person for any failure of duty in this respect. All registrations of title and all entries and notations made by him upon the Title Register of transfers or of the cancellation or discharge of liens or encumbrances, shall be *prima facie* conclusive; and unless a *caveat* be filed, as provided for in this Act, seeking to set aside, modify or otherwise affect such entry, notation or registration within twelve months from the date of the making of the same upon the Title Register the same shall become absolutely conclusive upon all persons; this to be considered and construed as a statute of limitations against the questioning of the correctness of the clerk's action, and is to be without exception on account of disabilities but shall not operate as a limitation in favor of the clerk as to any action against him for wrongdoing or neglect of duty. In the event application is made to a clerk to have any transfer or other transaction registered or noted, and he shall be in doubt as to whether the same should be registered, entered or noted, or shall be in doubt in regard to any detail thereof, either the clerk or any party at interest may petition the judge of the court for direction, and such judge, after it shall have appeared that the parties at interest have had reasonable notice, may proceed to hear the matter and to give directions and instructions to the clerk, whose duty it shall be to follow the directions and instructions of the court. In all matters required of the clerk under this Act, he shall be subject to the direction and orders of the court.

Sec. 60. If any person at interest shall object to any entry, registration or notation made by the clerk upon the Title Register, he may, unless such entry, registration or notation shall have become conclusive by lapse of time under the provisions of this Act, file with the clerk of the court a *caveat*, setting forth the entry, notation or registration to which he objects; setting forth what interest he has in the subject matter, and setting forth the ground of his objection and praying for such relief as he desires and deems appropriate in the premises. Thereupon the clerk shall note upon the Register of Titles the fact that *caveat* has been filed, and by whom, and to what entry, notation or act of registration it applies. Thereupon the matter shall be presented to the judge, who shall order all persons at interest, to show cause on a day named why the relief prayed for in the *caveat* should not be granted, and upon proof being made that due notice has been given to all parties at interest the judge shall proceed to hear the matter and shall render a judgment of the court, giving direction to the matter, and may thereupon require such entry, registration or notation to be canceled or modified, and may require the outstanding certificate of title and owner's certificate to be modified accordingly. To that end the court may require the outstanding owner's certificate of title to be brought into court by *subpoena duces tecum*, or other process, including attachment for contempt, and if the court finds that production of the certificate cannot be compelled, then he shall provide for publication of notice of the court's action thereon for a period of time not less than once a week for four weeks in the paper in which the sheriff's sales of the county are advertised, the expense of making the publication to be provided for in such manner as the court shall order.

Sec. 61. The method of causing notations of judgments, liens, encumbrances or special rights of any kind, other than voluntary transactions claimed by any person against registered land, shall be as follows: The person desiring the notation to be made shall, by himself, his agent or attorney, file, upon a form substantially in compliance with that herein provided for, a request for the notation to be made, giving the particulars, and in case the lien or special rights relate to any other matter of record or court proceeding, he shall state the book and page where recorded, and if it relates to any special right, shall succinctly give the details of such right so claimed. In case the notation is for the purpose of protecting the lien of a judgment the person making the application for the notation shall produce and exhibit to the clerk the execution or a certified copy of the judgment, except in cases where the judgment is rendered in the superior court of the same county where the registration is made, in which event

production of the execution or certified copy of the judgment shall not be required, but the clerk may act upon inspection of the original judgment on the minutes of his own court.

Sec. 62. Voluntary cancellations may be made of any mortgage, certificate of indebtedness or any lien, equity, encumbrance, *lis pendens* or other similar matter relating to registered land or any interest therein, and may be entered by the clerk upon the Title Register and the owner's certificate. The entry, notation or registry of such cancellation may be made upon the written authority of the person for whose benefit the original registration, notation or entry was made, or his personal representative, or lawful assignee, in a form substantially in compliance with that herein prescribed, attested by any officer authorized to attest deeds; or upon order of the judge. In case of a creditor's certificate the same shall also be surrendered and canceled. Notations of delinquent taxes or assessments may be canceled upon the production of a certificate of the proper tax officer showing that such taxes or assessments have been paid.

Sec. 63. Every registered owner of any estate or interest in land brought under this Act shall, except in cases of fraud or forgery to which he is a party, or to which he is a privy without valuable consideration paid in good faith, hold the land free from any and all adverse claims, rights, or encumbrances not noted on the certificate of title in the Title Register, except:

First. Liens, claims or rights arising or existing under the laws or Constitution of the United States which the statutes of this State cannot require to appear of record under registry laws.

Second. Taxes and levies assessed thereon for the current calendar year.

Third. Any lease for a term not exceeding three years, under which the land is actually occupied.

Fourth. Highways in public use and railroads in actual operation.

No proceedings to attack or to set aside any transaction for such fraud or such forgery as is referred to in this section shall be brought or be entertained by any court unless the same shall have been brought within seven years from the date of the transaction or of the registration to which the same relates. Nothing herein shall conflict with the provisions of this Act allowing attack for good cause to be made upon a registration made by the clerk at any time within twelve months from the date of such registration.

Sec. 64. The obtaining of a decree of registration and the entry of a certificate of title shall be construed as an agreement running with the land, and except as hereinafter provided, the same shall remain registered land subject to the provisions of this Act and all amendments thereof.

Sec. 65. If the person who is the registered owner of the fee simple title to the land shall at any time so desire, he may cause a transfer of the title to be registered to himself, "his heirs and assigns, free from further registration." Thereupon the land and the title thereto shall be free from the necessity of subsequent registration, and shall as to subsequent transactions be exempt from the provisions of this Act, so far as the interest of the person thus freeing it from registration and subsequent holders under him are concerned; but as to such interest the certificate of title and owner's certificate registered and issued on the last transfer shall stand as a conclusive source of subsequent title to the same extent as if it were a grant from the State. However, if the interest thus freed is, according to the Title Register, subject to liens, exceptions, encumbrances, trusts or limitations of any kind, such liens, exceptions, encumbrances, trusts or limitations shall not be affected, but shall be noted on the owner's certificate as issued on the last transfer and shall be effective against the same as long as they shall subsist. If the fee simple be registered undividedly in the name of more than one person, as tenants in common or other like relationship of joint or common interest, it shall not be freed from registration except upon the unanimous action of the owners of the entire fee.

Sec. 66. No title to nor right nor interest in registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession.

Sec. 67. For the purposes of this Act, the superior courts of the various counties of this State shall be considered as being open and in session at all times, except on Sundays; and every official act of the judge on any matter shall be considered as having been rendered in open court; and no recess or adjournment of the court taken generally or for any other particular purpose shall be considered as having recessed or adjourned the court so far as the purposes of this Act are concerned; and any limitations existing, either under general law or special acts as to the length of time in which the various superior courts of this State may sit in the various counties shall not be construed as affecting the provisions of this Act.

Sec. 68. Every clerk of the superior court, every ordinary and every other officer in this State having charge of public records shall allow each and every examiner appointed by any court in this State, for the purposes of this Act, free inspection of all the public records relating to his office and in any wise appertaining to any matter under the investigation of such examiner.

Sec. 69. In case any clerk is disqualified by reason of relationship or interest, or from any other cause, or in case of the death or other

disability of the clerk of the superior court to act in any matter arising under this Act, the duties required of such clerk may be performed either by the ordinary of the county or by a special clerk appointed by the judge for that purpose, the entry of appointment of such special clerk and of the purpose for which he is appointed being duly entered and recorded upon the minutes of the court.

Sec. 70. The judges of the superior courts in convention may from time to time make general rules and forms for procedure relating to the subjects in this Act dealt with, and may modify the forms herein prescribed, but such rules and forms shall be uniform throughout the State, and shall be subject to the provisions of this Act and the general laws of this State.

Sec. 71. In any case, by consent of the parties or upon order of the judge, the examiner may procure the services of a stenographer to report the testimony taken before him, and the compensation of such stenographer, unless agreed on by the parties, shall be fixed by the judge and taxed as costs.

Sec. 72. Wherever notice is required by this Act and no provision as to how notice shall be given is made, or wherever, in the discretion of the judge, additional notice to that provided for in this Act, should be given to any particular person or persons, or to the public generally, the judge may order such notice to be given, and provide the manner in which it shall be given.

Sec. 73. Except as otherwise specially provided by this Act, registered land and ownership therein shall be subject to the same rights, burdens and incidents as unregistered land, and may be dealt with by the owner, and shall be subject to the jurisdiction of the courts in the same manner as if it had not been registered. But registration shall be the only operative act to transfer or affect the title to registered land, and shall date from the time the writing, instrument, or record to be registered is duly registered on the Title Register. Subject to the provisions of Section 68, no voluntary nor involuntary transaction shall affect the title to registered land until registered or noted on the Title Register, in accordance with the provisions of this Act.

Sec. 74. Upon the original registration of any land under this Act there shall be paid to the clerk one-tenth of one per centum of the value of such land, to be determined by the court, as an assurance fund, which shall be subject to the trusts and conditions hereinafter declared for the uses and purposes of this Act.

Sec. 75. All moneys received by the clerk under the preceding section shall be kept in a separate account and be paid promptly into the State Treasury upon the special trust and condition that the same

shall be set aside by the Treasurer in trust as a separate fund for the uses and purposes of this Act, to be known as the "Land Registration Assurance Fund," which said fund is hereby appropriated to the uses and purposes set forth in this Act.

Sec. 76. Said moneys, in so far as the same may not be required to satisfy any judgment certified against the assurance fund under Section 79 of this Act, shall be invested by the Treasurer of the State in State bonds, or validated county or municipal bonds in trust for the uses and purposes set forth in this Act until said fund amounts to the sum of five hundred thousand dollars; but the income, or so much thereof as may be required therefor, may be applied towards the payment of the expenses of the administration of this Act and the satisfaction of any such judgment. Whenever and so long as the face value of the bonds purchased as aforesaid equals said sum of five hundred thousand dollars, other moneys thereafter coming into said fund, together with any income not required for the purposes aforesaid, shall be transferred from the land registration assurance fund to the general Treasury.

Sec. 77. Any person entitled to notice and who had no actual notice of any registration under this Act by which he may be deprived of any estate or interest in land, and who is without remedy hereunder, may, within two years next after the time at which the right to bring such action shall have first accrued to him, or to some person through whom he claims, bring an action of assumpsit against the Treasurer of the State in the Superior Court of Fulton County for the recovery, out of the assurance fund, of any damages to which he may be entitled by reason of any such deprivation. The assurance fund shall be defended in such action and in any appeal by the Attorney-General for the State. The measure of damages in such action shall be the value of the property at the time the right to bring such action first accrued, and any judgment rendered therefor shall be paid as hereinafter provided. If any person entitled to bring such action be under the disability of infancy, insanity, imprisonment or absence from the State in the service of the State or of the United States at the time the right to bring such action first accrued, the same may be brought by him or his privies within two years after the removal of such disability, but, provided, nevertheless, that all persons non-resident of the State, all persons who are described in the proceedings as being unknown, or of unknown address, or as to whom it appears from the record that they could not be found so as to be served, shall be considered as having had actual notice where notice has been published in accordance with the provisions of this Act.

Sec. 78. If such action be brought to recover for loss or damage

arising only through the legal operation of this Act, then the Treasurer of the State shall be the sole defendant. But if such action be brought to recover for loss or damage arising on account of any registration made or procured through fraud, neglect or wrongful act of any person not exercising judicial function, then both the Treasurer of the State and such person or persons shall be made parties defendant.

Sec. 79. If judgment be rendered for the plaintiff in any such action, execution shall issue against the defendant, if any, other than the Treasurer of the State. And if such execution be returned unsatisfied in whole or in part, or if there be no such defendants, then the clerk of the court in which the judgment was rendered shall certify to the Treasurer the amount due on account thereof, and the same shall then be paid by said Treasurer out of the assurance fund under the special appropriation hereby made of said fund for that purpose. Any person other than the Treasurer of the State against whom any such judgment may have been rendered shall remain liable therefor, or for so much thereof as may be paid out of the assurance fund, and said Treasurer may bring suit at any time to enforce the lien of such judgment against such person or his estate for the recovery of the amount, with interest, paid out of the assurance fund as aforesaid.

Sec. 80. The assurance fund shall not, under any circumstances, be liable for any loss, damage, or deprivation occasioned by a breach of trust, whether express, implied, or constructive, on the part of the registered owner of any estate or interest in land.

Sec. 81. If at any time the assurance fund be insufficient to satisfy any judgment certified against it as aforesaid, the unpaid amount shall bear interest and be paid in its order out of any moneys thereafter coming into said fund.

Sec. 82. All judgments and decrees of the superior court or the judge thereof rendered under the provisions of this Act shall be subject to review by the supreme court upon writ of error, and the procedure to obtain such review shall be by what is known as fast writ of error, and such as obtains in injunction and criminal cases.

Sec. 83. The duties required of the clerk and sheriff hereunder may be performed through their lawful deputies, the clerk or sheriff, as the case may be, however, being responsible for the act of such deputy.

Sec. 84. Neither the limitations provided by this Act within which proceedings hereunder may be brought, nor the provisions setting times whereupon matters and things shall become conclusive, shall prevent any injured party from having an action at law against any person or officer through whose fraud or negligence he may have suf-

ferred any loss or damage arising out of any acts of omission or of commission of such person or officer in connection with the matters and things arising from the provisions of this Act, but all such actions shall be governed by the statutes of limitations which would otherwise relate to the transaction.

Sec. 85. Any person who shall fraudulently obtain or attempt to obtain a decree of registration of title to any land or interest therein, or who shall knowingly offer in evidence any forged or fraudulent document in the course of any proceedings in regard to registered lands or any interest therein, or who shall make or utter any forged instrument of transfer or instrument of mortgage, or any other paper, writing or document used in connection with any of the proceedings required for the registration of lands, or the notations of entries upon the Register of Titles, or who shall steal or fraudulently secrete any owner's certificate, creditor's certificate, or other certificate of title provided for under this Act, or who shall fraudulently alter, change or mutilate any writing, instrument, document or record or registration or register provided for under this Act, or who shall make any false oath or affidavit in respect to any matter or thing provided for in this Act, or who shall make or knowingly use any counterfeit of any certificate provided for by this Act shall be guilty of a felony and be punished by imprisonment in the penitentiary for not less than one nor more than ten years. Any clerk, deputy clerk, special clerk or other person performing the duties of clerk, who shall fraudulently enter a decree of registration without authority of the court, or who shall fraudulently register any title, or who shall fraudulently make any notation or entry upon the Title Register, or shall fraudulently issue any certificate of title, or creditor's certificate or other instrument provided for by this Act, or who shall knowingly, intentionally and fraudulently do any act of omission or commission under color of his office in relation to the matters provided for by this Act shall be guilty of a felony and be punished by imprisonment in the penitentiary for not less than one nor more than ten years and shall, upon his conviction, be removed from office and thereafter forever disqualified from holding any public office. Any examiner of title who shall knowingly and fraudulently make any false report to the court as to any matter relating to any title which it is sought to register under the provisions of this Act, or as to any matter affecting the same, or as to any other matter referred to him under the provisions of this Act, or who shall fraudulently conspire or confederate with any other person or persons to use the provisions of this Act to the defrauding of any other person or persons, firm or corporation, or who shall be guilty of any willful malpractice in his office, shall be guilty of a

felony and be punishable by imprisonment in the penitentiary for not less than one nor more than ten years. Any sheriff or deputy sheriff or other person performing the duties of the office of sheriff who shall knowingly and fraudulently make any false entry or return in connection with any matter arising under the provisions of this Act, or who shall fraudulently conspire with any person or persons to defraud any other person or persons through the provisions of this Act, shall be guilty of a felony and be punished by imprisonment in the penitentiary for not less than one nor more than ten years, and on conviction shall be removed from office and thereafter forever disqualified from holding any public office in this State.

The felonies provided for in this Act may, in the matter of punishment, be reduced to misdemeanors in the manner prescribed in Section 1062 of the penal code of this State.

Sec. 86. The following is prescribed as the form of petition to be used when application is made for the original register of lands:

INITIAL PETITION FOR REGISTRATION OF LAND.

Georgia,.....County:

To the Superior Court of said County:

The petition of.....

shows:

The petitioner applies to have the land hereinafter described brought under the provisions of the Land Registration Act, and his title thereto confirmed and registered as provided therein, and under oath shows the following facts:

(1) Full name of each applicant.....

(2) Residence of each applicant.....

(3) Post office address of each applicant.....

(4) The name and address of applicant's agent or attorney upon whom process or notices may be served (not required unless applicant is a non-resident).....

(5) Full description of the lands (giving also land district and lot numbers where the land lies in that portion of the State where the lands have been surveyed by districts and numbers; and if more than one parcel is included, describe each parcel separately and distinctly)

.....
containing.....acres.

REPORT OF COMMISSION ON

- (6) What is the value thereof? \$.....
- (7) At what value was it last assessed for taxes? \$.....
- (8) What interest or estate does the applicant claim therein?.....
- (9) What is the value of the interest or estate claimed by the applicant?
- (10) From whom did the applicant acquire the land?.....
- (11) Does the applicant claim title by prescription?.....
- (If so, set forth fully the color of title, if any, under which the prescription is claimed and state the details of the possession by which it is claimed prescription has ripened. If the color of title consists of one or more instruments of record on the public records of the county such instruments need not be copied or exhibited to the application otherwise than by giving the name of the grantor, and the grantee, the date and nature of the instrument and a reference to the book and page where recorded).....
- (12) Does the applicant claim title by a complete chain of title from the State or other original source of title?.....
- (13) Is there a true and correct abstract of applicant's title papers attached hereto?.....
- (14) Do you know, or have information, of any other deed, writing, document, judgment, decree, mortgage or instrument of any kind not set forth in the abstract which relates to this land or any part thereof or which might affect the title thereto or some interest therein? If so, state the same.....
- (15) Has the land, or any part thereof, ever been set apart as a homestead or exemption or as dower? If so, state particulars.....
- (16) Who is now in possession of the land?.....
- (17) Do you know any one else who claims to be in possession of the land or any part thereof? If so, give name and address.....
- (18) Give name and address of each person occupying the land or any part thereof, and state by what right or claim of right such occupancy is held.....
- (19) Give the name, residence and address of each and every per-

son, other than the applicants who claim any interest, adverse or otherwise, vested or otherwise, in the land or any part thereof, stating the nature of the claim, and if any such persons are under disability of any kind, state the nature of the disability:

Name	Residence	Address	Disability if any	Nature of Claim

(20) Give the name, residence and address of the holder of every known lien, whether considered by the applicant to be valid or not:

Name	Residence	Address	Nature of Lien

(21) Give the names and addresses of the owners and occupants of all adjoining lands:.....

REPORT OF COMMISSION ON

(22) Is the land subject to any easement, except public highways and railroads in actual operation? If so, state fully.....

(23) Give age of applicant.....

(24) Is the applicant male or female?....., married or single, widow or widower.....

(25) If married, give wife's (or husband's) name and include her or him in the list of defendants.....

(26) The applicant names as defendants the following persons whose names have been given above, viz.:.....

and also all other persons "whom it may concern."

Wherefore the applicant prays process and judgment accordingly.

Petitioner's Attorney.

(To be sworn to by each applicant. Verification in case of a corporation may be made by any officer thereof; in case of minor or other person under disability, by the person filing the petition in his behalf.)

I do swear that I have read the foregoing petition, and have examined the schedules thereto attached, and that the same are true to the best of my knowledge and belief, and that nothing has been withheld in the answers which would in any wise affect the title to the land or any interest therein or which would disclose any person claiming an adverse interest, valid or not. I do further swear that I *bona fide* believe that the applicant is the true owner of the estate he seeks to have registered.

Sworn to and subscribed before me,
this.....day of191.....

(If more than one applicant, they may verify jointly or by separate affidavits.)

EXHIBIT A.

Abstract of Title.

Sec. 87. The following is prescribed as the form of process to be attached to the petition:

Georgia,.....County:

In the Superior Court of said County:

To the Sheriffs of said State and their Lawful Deputies:

The defendants.....

.....
and all other persons whom it may concern are required to show cause before said court on the.....day of.....191.....
(not less than forty or more than fifty days from date of process), why the prayers of the foregoing petition should not be granted, and why the court should not proceed to judgment in such cause. Witness the Honorable....., Judge of said court, this the.....day of.....191.....

Clerk.

Sec. 88. The advertisement to be inserted in the newspaper in which the sheriff's sales of the county are advertised for four insertions in separate weeks should be substantially in the following form:

Georgia,.....County:

In the Superior Court of said County:

To whom it may concern, and to (here insert the names of all defendants, if any, who reside beyond the limits of the State, or whose place of residence is unknown).

Take notice that.....
has filed in said court a petition seeking to register the following lands under the provisions of the Land Registration Act, to-wit: (Here describe lands.) You are warned to show cause to the contrary, if any you have, before said court on the.....day of.....191.....

This.....day of.....191.....

Clerk.

Sec. 89. Acknowledgment of service may be made in the following form, provided it be entered on the petition or entitled in the cause and signed in the presence of the judge, the clerk or the examiner, and attested by such officer.

Due and legal service of the within and foregoing petition for registration is acknowledged. Further service, process and notice waived, this the.....day of.....191.....

In the presence of.....

Sec. 90. The sheriff's return should be made substantially in the following form, and entered on or attached to the petition:

REPORT OF COMMISSION ON

Georgia,.....County:

I have served copies of the within petition for registration and process upon the following persons at the time and in the manner stated as follows:.....

I have also posted in a conspicuous place on the land described herein and on each separate tract thereof a copy of the notice as required by law. I have furthermore gone upon the land and the following is the name and postoffice address of each and every person above the age of 14 years actually occupying the premises, viz.:.....

This the.....day of.....191.....

Sheriff.

Sec. 91. The clerk should also enter on the petition a certificate substantially in the following form:

I certify that on the.....day of.....191....., I mailed to each of the following persons a copy of the within petition and process to his postoffice address as disclosed by the record, viz.:.....

and that advertisement has been published in accordance with law, a copy of said advertisement being hereto attached.

This.....day of.....191.....

Clerk.

Sec. 92. Substantially, the following form should be used in appointing examiners:

Mr....., a competent attorney at law, of good standing in his profession, and of at least three years' experience, is hereby appointed a master or auditor in and for the.....Judicial Circuit to discharge the duties of Examiner as provided in the Land Registration Act. This appointment is.....(either general or for a particular case, as the case may be.)

This.....day of.....191.....

Judge, Superior Court.

Sec. 93. The examiner is required to take the following oath to be filed along with the order of his appointment in the office of the clerk of the superior court of his residence:

I....., do swear that I will faithfully, well and truly perform the duties of Examiner under the Land Registration Act, according to law to the best of my skill and ability.

Sworn to and subscribed before me, this
.....day of.....191.....

Sec. 94. Upon the clerk's notifying the judge that a petition has been filed, he should promptly refer it to an examiner in substantially the following form:

In the Superior Court of.....County, Georgia:
In Re

Application to Register

Land.

Ordered that this matter be and is hereby referred to.....
....., as examiner for proceedings in conformity with the Land Registration Act. This.....191.....

Judge.

Sec. 94. The following is suggested as the general form of the preliminary report of an examiner:

In the Superior Court of.....County, Georgia:
In Re

Application to Register

Land.

The undersigned, as examiner, makes the following preliminary report:

I have examined all records as required by the Land Registration Act.

I attach an abstract of the title (Schedule A) as shown on the public records and so far as obtainable from other trustworthy sources.

The names and addresses of all persons, so far as I have been able to ascertain who have any interest in the land, are set out in Schedule B hereto showing their several apparent or possible interests and

indicating upon whom and in what manner service should be made. A like disclosure of all adjoining land owners is set out in Schedule C hereto.

I find the following to be a history of the possession:

Special attention is called to the following matters:

This.....191.....

Examiner.

SCHEDULE A.

Examiner's Full Abstract.

SCHEDULE B.

Names and addresses of all persons having apparent or possible interests in the land, other than applicants, and indicating upon whom and in what manner further service, if any, should be made.....

SCHEDULE C.

Names and addresses of all adjoining owners:.....

Sec. 95. The following is suggested as the general form of the examiner's final report:

In the Superior Court of.....County, Georgia:

In Re

Application to Register

Land.

The undersigned, as examiner, makes this his final report:

The preliminary report filed by the undersigned is made a part hereof and is correct except as herein otherwise stated.

The following proceedings have occurred before the examiner, and accompanying herewith is a brief (or a stenographic) report of the evidence taken on the hearing.....

In Exhibit....., hereto, is a report of the matters ascertained by the independent examination of the examiner.

My conclusions of fact are set forth in Exhibit....., hereto annexed.
 My conclusions of law are set forth in Exhibit....., hereto annexed.
 I find the state of the title to be as follows:

.....

I find that there are liens and encumbrances on the land as follows:

.....

This....., 191.....

Examiner.

Sec. 96. Decrees of title should be rendered in accordance with the following form:

State of Georgia,.....County:

In the Superior Court of said County:

In Re

Application to Register

.....

Land.

The above entitled cause coming on to be heard, and it appearing to the court that process has been served and notice given and publication made, all in full compliance with the Land Registration Act, and that all the requirements of said Act have been complied with, it is decreed, ordered and adjudged that the title to the lands involved, to-wit: (here describe lands) is held and owned as follows:

The fee simple belongs to.....

subject to the following limitations and conditions:

.....

It is further ordered and decreed that said lands be and are hereby brought under the operation and provisions of the Land Registration Act, and the title of the said.....

in and to the estate herein set forth above is confirmed and ordered registered; subject, however, to the following liens and encumbrances, viz:.....

.....

and subject also to.....

Let this decree be entered on the minutes of this court and on the Register of Decrees of Title of said county.

In open court this.....191.....

Judge.

Sec. 97. It is contemplated by this Act that the book known as the Register of Decrees of Titles shall be made up in the following manner. It should be of such size as that each page may contain a full copy of the decree of title. Only one (1) decree should be entered on any page. Each page should have printed thereon the form of the decree of title as herein prescribed, with ample spacing left in the blanks. At the bottom of the page should be the words, "Entered and registered this.....day of.....191....., ato'clock,.....M., and certificate of title No..... issued thereon.

"....."
"Clerk."

At the top of the page and preceding the copy of the decree should be the words, "Registered Title No....." The first decree entered is numbered, "Registered Title No. 1"; the second, "Registered Title No. 2," and so on in continuous, consecutive order. The registered title number of a registered tract never changes, though any number of subsequent certificates may be issued thereon; therefore the registered title number and the certificate number will usually be different.

Even though several separate tracts may be joined in the same application the judge should render separate decrees as to each tract; and these decrees should be separately entered and given separate registered title numbers.

Every certificate of title and every owner's certificate and creditor's certificate must carry on it (in addition to its own certificate number) the registered title number of the decree under which the tract to which it pertains was registered.

A part of the register of decrees of titles shall be an alphabetical index thereto which the clerk shall carefully keep. Whenever a decree is entered on the Register of Decrees of Title the clerk shall immediately index the same in the name of the person in whose favor the title is registered, under proper alphabetical head; the name being followed by the registered title number. If the decree is in favor of more than

one person it shall be separately indexed under the name of each and all of them; the name of each of said persons being shown under the proper alphabetical head.

Sec. 98. It is contemplated by this Act that the Title Register shall be a well-bound book with pages not less than 18 inches wide. It shall be labeled on the back with the words "Title Register" followed by the name of the county. Additional labels may be put on to show what certificates are included (as for example, "Certificates 1501-2000, inclusive,") or other similar information, for convenience's sake. It shall be printed and ruled in substantially the form here shown:

TITLE REGISTER

CERTIFICATE OF TITLE No.

CERTIFICATE OF TITLE

STATE OF GEORGIA, COUNTY OF

THIS IS TO CERTIFY, That the title to the estate hereinafter mentioned in and to the following described tract of land in said county, viz.:

is registered under the provisions of the land registration Act and thereby vested in.

The estate owned by said.....in said lands is as follows:

subject to the following limitations, conditions, encumbrances, etc., viz.:

and to any other that may be noted hereon. Witness my hand and seal of office, this.....day of.....19....., at.....o'clock.....M.

(OFFICIAL SEAL)

(OFFICIAL SEAL)
ENTERED AND REGISTERED (on transfer from Certificate of Title No.), this day of 19...., at...o'clock M....Clerk.
Clerk Superior Court.

TRANSFERS.

[illegible]

SPECIAL ENTRIES AND NOTATIONS

[illegible]

•In Issuing first Certificate on a decree, strike the words in parenthesis.

TITLE REGISTER _____ COUNTY

REGISTERED TITLE No.

CERTIFICATE OF TITLE No.

LIENS, ENCUMBRANCES, AND OTHER MATTERS AFFECTING THIS CERTIFICATE

IN FAVOR OF	Date	Amt.	Nature of the Instrument. (If Mortgage or Creditor's Certificate, describe indebtedness. If special, give reference to record for details)	REMARKS	Entered and Registered				Clerk's Signature	Date Canceled				Clerk's Signature to Cancellation				
					Yr.	Mo.	Da.	Hr.		M	AM	PM	Yr.		Mo.	Da.	Hr.	M
CREDITOR'S CERTIFICATES																		

This Certificate of Title Canceled, and Certificate of Title No.....issued in lieu thereof, this....day of.....19...., at....o'clock....M.
 Owner's Duplicate Canceled*Clerk.

*In case cancellation is by order of Judge, state that fact and give reference to book and page of the minutes.

The two pages thus facing each other on the register constitute the original certificate of title, when the blanks are duly filled in and signed by the clerk. The first certificate of title in the book should be numbered "Certificate No. 1," the next one, "Certificate No. 2," and so on, in continuous, consecutive order. If a new book be opened the numbering therein should begin with the number next succeeding the last number in the book just completed.

In registering a certificate of title, in addition to the certificate number, the registered title number should also be inserted. The registered title number is always the same as that which appears on the decree of title, by virtue of which the land to which the certificate relates was originally registered. Therefore, every certificate of title registered in the Title Register, bears a different certificate number from every other certificate of title registered therein, but all certificates of title which refer to the same registered tract, no matter how many such certificates may be issued in the course of time, bear the same registered title number.

The clerk shall keep an alphabetical index of the Title Register. This may most conveniently be kept in a separate book. Whenever a certificate of title is entered in the Title Register the clerk shall insert in the index under proper alphabetical head the name of the person in whose favor the certificate is registered, and the reference to the certificate number and the registered title number. Whenever a certificate is entered in the name of more than one person, the name of each shall be likewise alphabetically indexed.

Sec. 99. When registering a certificate of title upon a transfer the clerk shall bring forward and appropriately enter on the new certificate of title all entries and notations appearing on the certificate from which the transfer is made, except such as shall have been canceled. In transcribing entries brought forward the clerk will note under the column headed "Remarks" against such entries the words "brought forward."

Sec. 100. The clerk shall upon the request of any person, and the payment of lawful fees, issue a certified copy of any certificate of title or of any entry thereon, in like manner as he may issue certified copies of any other public record in his office, but whenever he so does he shall plainly mark in large legible letters across the face of the certificate the word "Copy." If certified copy of a canceled certificate or entry shall be made, in addition to transcribing a copy of the entry of cancellation, the clerk shall also plainly mark the words "Canceled certificate," or "Canceled entry," as the case may be, across the face of the copy.

Sec. 101. Whenever a plat of the premises, too large or too intricate for easy transcription on the Register of Decrees of Title or on the certificate of title, is a part of the description of the lands or is used to aid description, it shall not be necessary for the clerk to copy the same on the Register of Decrees of Title or on the certificate of title, but he shall record the same in one of the public record books in his office, and in lieu of copying the plat shall note the existence of the same, together with a reference to the book and page where recorded. If the holder of the owner's certificate desires a copy of the plat attached as a part of his owner's certificate, the clerk shall make a copy and certify it and so attach it upon payment of a fee of \$1.00 for that particular service.

Sec. 102. Whenever in the registering of any certificate of title or any notation or entry on the Title Register it is found that the description of the premises or the portion thereof involved or any other detail in connection with the transaction is too lengthy to be transcribed in full in the proper space on the Register it shall be permissible to record the instrument, document or writing in which such lengthy detail or description is contained on some public record book of the county, and, instead of setting forth the description or other detail, as the case may be, *in extenso*, on the Title Register, to state it in general terms with the reference for further particulars to the public record where recorded thus: "For further details see Deed Bookpage....." and such registration shall be adequate to all intents and purposes, and the record thus made on the public record shall be considered as a part of the certificate of title contained on the Title Register.

Sec. 103. Whenever any of the description or details of a certificate of title on the Title Register shall be set out in full in some other record of the clerk's office with reference thereto on the Title Register, as hereinbefore provided, like reference shall be made on the owner's certificate and on creditor's certificates when thereafter issued, but if the holder of such owner's certificate or creditor's certificate shall so require, the clerk shall make a full and complete copy of such record to which reference is made and certify it as such and attach it to the owner's certificate or the creditor's certificate, as the case may be. For making and certifying such copy of the recorded document or writing and attaching it to the owner's certificate or creditor's certificate, as the case may be, the clerk shall be paid ten cents per hundred words in addition to the other regular fees in this Act provided.

Sec. 104. The form of the owner's certificate of title shall correspond in general form with the certificate of title except that it shall be headed with the words, "Owner's Certificate of Title." It is sug-

gested that it be prepared on paper of suitable size, to be folded into four pages; the first page to contain the certificate proper (i. e., omitting the notations and special entries); the inner pages (i. e., pages 2 and 3) to be ruled and written or printed (preferably the latter) in conformity with the form herein shown for the printing and ruling of the Title Register for the entry of transfers, liens, encumbrances, creditor's certificates and other like matters, these two pages being treated for this purpose as a single sheet, so that ample space will thereby be given for the crosswise extension of the entries. On the back of the fourth page, it is to be endorsed thus:

"OWNER'S CERTIFICATE OF TITLE.

Registered Title No.....
 Certificate No.....
 Issued to

.....
 Georgia,County.
 Entered and Registered (in lieu of certificate No.....which has been canceled).

This.....day of.....191.....,
 at.....o'clock.....M.

.....
 Clerk, Superior Court."

In case of the first issuance of the owner's certificate on the granting of a decree of registration the words shown in parenthesis in the endorsement above should be omitted.

It is suggested that convenience will be subserved by folding the certificate in the manner of folding documents written on legal cap or fool's cap paper, and by writing or printing the endorsement in the style and manner in which similar endorsements are usually put on legal documents. When printed blanks are prepared for use in this connection, it is also suggested that blank form of transfer be printed on part of the fourth page, other than that part used for the endorsement. Space, however, should be left on the fourth page for such entries as the clerk may be required to make from time to time, under the provisions of this Act, certifying that the certificate is valid with all entries to date noted.

Sec. 105. The clerk shall first satisfy himself before registering any voluntary transfer that the same is witnessed and attested or acknowledged in accordance with law; and he and the sureties on his bond are liable for any loss or damage occasioned to any person through the registration of a transfer not so executed.

Sec. 106. The following are prescribed as the regular forms of transfer. Other forms may be used in accordance with the provisions of this Act:

TRANSFER OF WHOLE OF REGISTERED ESTATE.

In consideration of.....
the undersigned.....
hereby transfers, sells and conveys to.....
.....his entire right, title, estate
and interest in the tract of land described in the certificate of title
No.....hereto attached registered as Registered Title No.....
in the office of the clerk of the Superior Court of.....
County, Georgia. This.....day of.....191.....

Signed and delivered in presence of:
.....
.....

**TRANSFER OF UNDIVIDED INTEREST IN
REGISTERED ESTATE.**

In consideration of.....
the undersigned.....
hereby transfers, sells and conveys to.....
.....
an undivided.....interest in the tract of land
described in the certificate of title No.....hereto attached,
registered as Registered Title No.....in the office of the clerk
of the Superior Court of.....County, Georgia.
This.....day of.....191.....

Signed, sealed and delivered in presence of:
.....
.....

**TRANSFER OF DIVIDED PORTION OF A REGIS-
TERED ESTATE.**

In consideration of.....
the undersigned hereby transfers, sells and conveys to.....
.....
his entire right, title, interest and estate in and to the following
lands, viz:
.....
being a divided portion of the tract of land described in the certificate
of title No.....hereto attached registered as Registered Title

REPORT OF COMMISSION ON

No. in the office of the clerk of the Superior Court of
 County, Georgia.

This day of 191.....

Signed, sealed and delivered in presence of:

TRANSFER TO SECURE DEBT WITH POWER OF SALE.

To secure a debt payable to.....
 in the sum of.....

evidenced as follows:.....

the undersigned hereby transfers, sells and conveys to said.....

all the title of the undersigned in and to the tract of land described
 in the certificate of title No..... herewith shown, registered as
 Registered Title No..... in the office of the clerk of the Superior
 Court of..... County, Georgia, with
 power to sell the same after lawful advertisement, without foreclosure,
 in accordance with the provisions of the Land Registration Act, if
 any part of said debt is not paid at maturity.

This day of 191.....
 Signed, sealed and delivered in presence of:

Sec. 107. The following is the form of creditor's certificate referred
 to in this Act:

CREDITOR'S CERTIFICATE.

State of Georgia, County:

Registered Title No.....

Certificate No.....

I hereby certify that the title to the estate hereinafter mentioned in
 the following described land lying in said county, viz.:

is registered under the provisions of the Land Registration Act and
 thereby vested in.....
 as security for a debt created by the holder of the owner's certificate
 of title to said estate, viz.: (here insert name of the holder of the

owner's certificate); said debt being particularly described as follows:

with power conferred to sell the same after lawful advertisement without foreclosure in accordance with the provisions of the Land Registration Act, if any part of said debt is not paid at maturity. The estate in said land so held is as follows:

subject to the following limitations, conditions, encumbrances, etc., viz.:

and such others as may be noted hereon.

Witness my hand and seal of office this.....day of
.....191....., at.....o'clock,.....M.

Clerk, Superior Court.....County.
(Official Seal.)

All uncanceled entries appearing on the certificate of title at the time the creditor's certificate is issued shall be noted and entered on the creditor's certificate.

The creditor's certificate shall bear an endorsement on its back in the following form:

CREDITOR'S CERTIFICATE.

Registered Title No.....
Certificate No.....
On Lands Registered in the Name of
.....
Issued to.....
Georgia,County.
Entered and Registered this.....
day of.....191.....
at.....o'clock,.....M.

Clerk, Superior Court.

Sec. 108. Where only a portion of the registered land or only an undivided interest is transferred to secure a debt, the instrument of transfer and the creditor's certificate may be in the same form as those prescribed in the two preceding sections with the exception that the portion or the undivided interest shall be distinctly stated.

Sec. 109. Where the judge orders a transfer to be made under any of the provisions of this Act the judge's order of transfer shall be in the following form, unless the exigencies of the case require a different form:

REPORT OF COMMISSION ON

JUDGE'S ORDER OF TRANSFER.

In the Superior Court of.....County, Georgia:

For good cause shown to the court the clerk is directed to cancel the certificate of title No....., Registered Title No....., standing in the name of....., on the Title Register, and to register a certificate of title in lieu thereof as follows:

in accordance with the decree of court rendered in the suit of vs.

in.....Court; and transfer of title is accordingly ordered. You will enter this transfer upon the Title Register, noting upon the same a reference to the book and page upon which the above recited order or decree may be found. This order of transfer to be effective upon the presentation of the outstanding owner's certificate, which you will cancel. *

This.....day of.....191.....

Judge.

(*If the court has not been able to require the production of the outstanding owner's certificate, the judge shall erase this sentence from the order and substitute in the blank space below it the following: "You will cause notice to be published in accordance with the law, that the certificate is canceled.")

If the exigencies of the case require a variation from the form above prescribed the clerk shall also record the judge's order on the minutes of the court and under the appropriate heading in the entry of transfer on the Title Register, write the words, "Special, see Minute Book,page....."

If the judge's order of transfer is made without obtaining production of the outstanding owner's certificate the clerk in entering the transfer shall, under the heading, "Remarks," write "Owner's certificate not produced, but canceled by publication."

Sec. 110. The regular form of mortgaging land shall be as follows:

The undersigned.....
to secure the following indebtedness, viz:.....

mortgages to.....
the estate, title and interest of the undersigned in and to all of the tracts of land described in the certificate of title No....., herewith shown, registered as Registered Title No.....in the

office of the clerk of the Superior Court of.....County, Georgia.

Signed, sealed and delivered in presence of:
.....
.....

If only a part or undivided interest is mortgaged, strike the word "all" and insert particularly a description of the portion or interest mortgaged.

Mortgages so executed may be registered as regular instruments, as hereinbefore provided.

Mortgages in other forms and with other provisions may be registered, but shall also be recorded in accordance with the provisions of this Act regulating the registration of such irregular instruments.

Sec. 111. Delinquent taxes and assessments shall be noted on the Title Register upon the officer charged with the collection of taxes filing with the clerk a certificate substantially in the following form:

NOTATION OF DELINQUENT TAXES.

I certify that.....(State, county or city, as the case may be) has a lien for unpaid taxes (or assessment, as the case may be) for the year 191....., against the land described in Certificate No....., Registered Title No....., registered in the office of the clerk of the Superior Court of.....county, in the amount of \$..... The clerk will please note the same on the Title Register.

This.....day of.....191.....

Tax Collector.

Sec. 112. The regular form to be used by any person, his agent or attorney, desiring a judgment to be noted on the Title Register, is as follows:

NOTATION OF JUDGMENT.

To the Clerk, Superior Court.....County, Georgia:

Please note on certificate of title No....., Registered Title No....., a judgment, issued from.....court of.....in favor of

..... vs.

for the amount of \$.....

This.....day of.....191.....

Sec. 113. The regular form to be used where any person desires a notation to be made of any lien, encumbrances or special right (other than voluntary transactions, and other than those herein otherwise provided for), is as follows:

REPORT OF COMMISSION ON

REQUEST FOR NOTATION OF SPECIAL RIGHT.

The undersigned.....
 claims against the land described in certificate No.....,
 Registered Title No....., registered in the office of the clerk
 of the Superior Court of.....County, the
 following lien (encumbrance, equity or special right, as the case may
 be)

.....
 in proof of which reference is had to the following record or court
 proceeding, viz:.....

.....
 Please note the same upon the Register of Titles accordingly.

.....
 Sworn to and subscribed before me, this
 the.....day of.....191.....

.....
 The above form may be used to give notice of a *lis pendens*.

If the description of the alleged encumbrance, equity or special right be too lengthy to note with convenience on the blanks in the Title Register, the request for the notation of the same shall be recorded on the deed book of the county and the clerk shall register only a general description of it, but shall note under the appropriate column heading in the Title Register the reference, "Special, see Deed Book....., page....."

Sec. 115. Authority may be given to register the cancellation of a creditor's certificate by the owner thereof writing thereon "Canceled, the clerk will please cancel the same on the Title Register," dated and signed in the presence of any officer authorized to attest deeds. If the person owning the creditor's certificate is not the person in whose name it was issued and if the original creditor shall not have endorsed it in blank, the owner signing the cancellation shall also make affidavit that he is the owner of the creditor's certificate and entitled to cancel it. The creditor's certificate shall be surrendered to the clerk at the time of the registration of the cancellation.

Sec. 116. Authority to the clerk to cancel entries or other liens, mortgages, encumbrances, special claims and like matters may be conferred by the person in whose favor the same exists or his personal representative executing a request as follows:

REQUEST TO CANCEL ENTRY.

To the clerk of the Superior Court of.....County:

You are directed to cancel the entry registered in my favor on certificate of title No....., Registered Title No....., claim-

ing the following lien (encumbrance or special right, as the case may be) _____

This _____ day of _____ 191 _____

Sec. 117. Where it is desired to register a voluntary transaction other than those for which forms have been otherwise indicated or prescribed the instrument showing the voluntary transaction shall be presented along with the owner's certificate and the same shall be noted not only on the certificate of title in the Title Register, but also on the owner's certificate. If the instrument be already recorded on some public record, reference shall be made in the Title Register and on the owner's certificate to the book and page where it is recorded; if it be not already recorded the clerk shall record it, making like reference in the Title Register and on the owner's certificate to the book and page where recorded.

Sec. 118. The holder of an owner's certificate of title may at any time present it to the clerk, and if the certificate of title on the Register has not been canceled, the clerk shall thereupon enter on the owner's certificate all entries and notations of every kind which shall appear on the certificate of title if all such entries shall not have already been entered on the owner's certificate, and shall thereupon endorse upon the owner's certificate the words "Valid, with all entries noted to this date, this _____ day of _____ 191 _____, at _____ o'clock, _____ M." signing the same officially.

Sec. 119. The county commissioners or other officer in each county having in charge county business shall furnish the clerk with the necessary durable filing cases and he shall carefully number and file away all papers relating to registered lands and dealing therewith. All the papers relating to each registered title shall be filed together and separately from the papers relating to any other registered title. They shall be filed away in such regular consecutive numerical arrangement as to make them easily accessible at all times. Vertical filing is recommended.

Sec. 120. The fees payable under this Act shall be as follows:
To the Clerk of the Superior Court:

For all services in initial registration from the time of filing the petition up to and including the registration and issue of the first certificate and owner's certificate registered on a decree of title, four dollars and postage, unless separate decrees are registered, when he shall get one dollar extra for each additional decree and the registering and issuing of the first certificates thereon. In contested cases three dollars additional may be taxed as costs.

Registering a transfer and registering thereupon certificate of title

and issuing new owner's certificate and making necessary cancellations in connection therewith, full service, one dollar.

For issuing a duplicate certificate in lieu of lost certificate, fifty cents.

For issuing a certified copy of certificate of title and entries thereon, one dollar.

For noting a judgment or other lien on Title Register, fifteen cents.

For certifying an owner's certificate as "valid with all entries noted to date," twenty-five cents.

For the notation or registration of any mortgage or other voluntary transaction not herein otherwise provided, including every act necessary therefor, and, in the case of creditor's certificate, including the issuance of the creditor's certificate, seventy-five cents.

Other notations and entries (not otherwise provided for), fifty cents.

In case further record of an instrument is required on account of its form the clerk shall be paid for the record of such instrument at the rate of ten cents per hundred words, in addition to the other fee herein prescribed.

For each entry of cancellation, twenty-five cents.

In cases of involuntary transactions, and in case of *caveats* and other matters referred to the court for action, the clerk shall be allowed, in addition to the fees herein otherwise prescribed, the sum of ten cents per hundred words for recording such proceedings upon the minutes of the court, and fifty cents for each judgment rendered therein.

If any matter be carried to the supreme court the clerk's fees in connection with proceedings to take the case to the supreme court shall be the same as in other cases carried from the superior court to the supreme court.

To the Examiner of Titles:

For examining a title and making report to the court one dollar per thousand (or fraction thereof) on the value of the land, as determined by the court (but not to exceed a maximum of one hundred dollars) and postage, and ten dollars.

In contested cases for hearing the case and making report to the court the judge may in his discretion allow additional compensation, but in an amount not exceeding the same fee as that allowed an auditor for reporting his findings in equity cases under Civil Code, Section 5148. He shall not be paid extra for reporting the evidence, but when a stenographer is used by consent of the parties or order of the judge the stenographer shall be paid his usual fee.

To Sheriffs:

For ascertaining and reporting to the court the names and addresses

of the persons actually occupying the premises described in the petition, one dollar.

For each service of process and notice required, one dollar.

For posting copy of the petition upon the premises, fifty cents.

For any other services of the clerk, sheriff or surveyor, not specially provided for herein, a fee to be fixed by the court in conformity with what is usual and lawful for similar services rendered by such officer in ordinary cases.

With each application for initial registration the applicant shall deposit with the clerk the sum of twenty dollars as a deposit to guarantee costs and may from time to time be required by the court to make additional deposits. The clerk shall not be required to enter any notation, entry or registration upon the Register of Title or the owner's certificate unless fees prescribed therefor are paid to him. In all contested cases, and in all matters referred to the judge for his direction by any of the provisions of this Act he shall award the cost of such proceeding accordingly as in his discretion the justice of the case may dictate, and to that end may assess all the costs against one of the parties, or may divide it among the parties in such ratio as seems just.

Sec. 121. This Act shall take effect on the First of January next after its passage.

Sec. 122. All laws and parts of laws in conflict are repealed.

TREASURER'S REPORT.

Z. D. Harrison, Treasurer.

In account with the Georgia Bar Association.

To balance June 3, 1915-----	\$1,502.69	
To collections since June 3, 1915-----	1,905.00	
By voucher No. 1. J. L. Stevens-----		\$ 115.00
By voucher No. 2. St. Simons Tr. Co.		50.00
By voucher No. 3. J. H. Morgan----		14.00
By voucher No. 4. New. St. S. Hotel		23.94
By voucher No. 5. Eugene C. Massie		46.25
By voucher No. 6. Fielder & Allen Co.		6.00
By voucher No. 7. Byrd Printing Co.		27.50
By voucher No. 8. J. W. Burke Co.--		970.91
By voucher No. 9. J. H. Merrill----		9.00
By voucher No. 10. Edward Crusselle--		72.50
By voucher No. 11. Cont. Exps. Sect'y		17.11
By voucher No. 12. Z. B. Rogers-----		13.00
By voucher No. 13. Excg. on Drafts--		28.40
By voucher No. 14. Salary of Secretary		300.00
By voucher No. 15. Salary of Treasurer		150.00
		<hr/>
		\$1,843.61
Balance June 1, 1916-----		\$1,564.08
		<hr/>

\$3,407.69 \$3,407.69

Examined and approved June 1, 1916.

(Signed) A. G. POWELL,
Chairman Executive Committee.

CHARTER
OF
THE GEORGIA BAR ASSOCIATION.

GEORGIA, BIBB COUNTY.

To the Superior Court of said County :

The petition of L. N. Whittle, Charles C. Jones, Jr., Henry Jackson, M. H. Blandford, Pope Barrow, George A. Mercer, Clifford Anderson, George N. Lester, Marshall J. Clarke, Robert Whitfield and W. B. Hill, respectfully sheweth that they desire themselves and their associates, and their successors, to be incorporated under the name of "The Georgia Bar Association."

The organization for which incorporation is asked has no capital stock, and is not organized for individual pecuniary gain ; but its object is to advance the science of Jurisprudence, promote the administration of Justice throughout the State, uphold the honor of the profession of the Law, and establish cordial intercourse among the members of the Bar of Georgia.

Petitioners pray that said corporation be invested with the power to contract, to sue and be sued, to have and use a common seal, to make By-Laws, binding on its members, not inconsistent with law, to receive donations by gift or will, to acquire and hold such property, real or personal, as is suitable to the purpose of its organization, to alienate the same in order to promote such purpose, to enforce good order, and generally to do all such acts as are suitable and necessary for the legitimate execution of the design and object of said Association. The Constitution and By-Laws adopted by the voluntary Association, under the name of "The Georgia Bar Association," at its meeting in Atlanta, August 1, 1883, and embodied in a printed pamphlet, shall be the Constitution and By-Laws of the corporation for which corporate existence is now

here prayed, with power to amend the same, as therein provided. The several officers and committees of said voluntary Association shall be the officers of said corporation until their successors are chosen, as provided in said Constitution and By-Laws. The members of said voluntary Association who became members thereof at said meeting on August 1, 1883, and who have since that time been elected members, shall become members of said corporation. All property, money, rights and interest of said voluntary Association now held by any officer thereof shall become the property of said corporation. Petitioners pray that they be incorporated for the term of twenty years, with the privilege of renewal. In view of the nature of their organization, petitioners are unable to state their place of doing business more definitely than to say that the meetings of said Association will be held at such places as may be designated by the Executive Committee.

Petitioners pray the court to grant an order for their incorporation as above set forth.

HILL & HARRIS,
Petitioners' Attorneys.

BIBB SUPERIOR COURT, April Term, 1884.

The foregoing petition for the incorporation of "The Georgia Bar Association," having been duly filed and presented to the undersigned, as presiding Judge, in open Court, and it appearing that the application is legitimately within the purview and intention of the Statutes in such cases, made and provided, and that the formalities required in such cases have been duly complied with, it is ordered and adjudged that petitioners, their associates and successors be, and they are, hereby created a body corporate, under the name of "The Georgia Bar Association," with all the powers and authority prayed for in said petition, and the Constitution and By-Laws, officers, committees and members and property of the voluntary organization known as "The Georgia Bar Association,"

shall be, and become, the Constitution and By-Laws, officers, committees and members and property of the corporation now created. Let these proceedings be recorded on the Minutes of Bibb Superior Court.

T. J. SIMMONS,
Judge Superior Court.

GEORGIA—BIBB COUNTY.

Clerk's Office, Superior Court.

I certify that the above and two foregoing pages contain a true and complete copy of all the proceedings had in said Court connected with the granting of a Charter to "The Georgia Bar Association," as the same appears from the records and files of said Court.

Witness my official signature and the seal of said Court, this nineteenth day of July, 1884.

(SEAL)

A. B. Ross, Clerk.

The following resolution, offered by George N. Lester, at the annual meeting held at Atlanta, Ga., August 13, 1884, was adopted, in regard to the foregoing:

RESOLVED, That this Association does hereby accept the Charter incorporating "The Georgia Bar Association," by the judgment of the Bibb Superior Court, and rendered at the April Term, 1884, and will henceforth proceed, under the provisions of said Charter, to operate from its date, and that said Charter and the petition therefor be printed in the proceedings of this meeting.

PROCEEDINGS TO REVIVE CHARTER.

GEORGIA, BIBB COUNTY.

To the Superior Court of said County:

The petition of A. L. Miller, of Bibb County, as President of the Georgia Bar Association; T. M. Cunningham, Jr., of Chatham County; S. P. Gilbert, of Muscogee County; E. P. S. Denmark, of Lowndes County; W. A. Wimbish, of Fulton County, and Samuel H. Sibley, of Greene County, as Vice-Presidents of said Association; Orville A. Park, of Bibb County, as Secretary of said Association; Z. D. Harrison, of Fulton County, as Treasurer of said Association, and Robert C. Alston, of Fulton County; Joseph Hansell Merrill, of Thomas County; John J. Strickland, of Clarke County; and William W. Gordon, Jr., of Chatham County, who together with the President, Secretary and Treasurer above named, constitute the Executive Committee of the said The Georgia Bar Association, said officers and Executive Committee being the Trustees of said Association, and said petitioners filing this petition on behalf of themselves, and all other members of the said The Georgia Bar Association, respectfully shows:

1. That under and by virtue of an order and judgment of this honorable Court granted at the April Term, 1884, thereof, The Georgia Bar Association was duly and regularly incorporated.

2. That the Charter granted as aforesaid was duly accepted by the incorporators and their associates. and that the said The Georgia Bar Association has ever since existed and acted as a body corporate under and by virtue of the charter aforesaid.

3. That the corporation has no capital stock and was not organized for individual pecuniary gain, but the object thereof, as set forth in the petition for incorporation is "To advance the Science of Jurisprudence, promote the administration of Justice throughout the State, uphold the honor of the profession of the Law, and establish cordial intercourse among the members of the Bar of Georgia."

4. That the period of time for which the said Association was incorporated was twenty (20) years, with the privilege of renewal at the expiration of said time.

5. That the charter of said corporation has now expired, more than twenty (20) years having elapsed since the same was granted, as hereinabove set forth.

WHEREFORE, The premises considered, your petitioners pray that the Charter granted as aforesaid to the said The Georgia Bar Association may be revived for the same purposes as were set forth in said original Charter, and that the said corporation as revived may stand clothed with all the powers, and possessed of all the rights, and be subject to all the debts, liabilities and burthens of the said The Georgia Bar Association, and that said corporation so revived may exercise all the powers and privileges herein prayed for for the full term of twenty (20) years, with the privilege of renewal at the expiration of said time.

P. W. MELDRIM,
ORVILLE A. PARK,

Z. D. HARRISON,
S. P. GILBERT,

Petitioners' Attorneys.

GEORGIA—BIBB COUNTY.

In person appeared Miss Essie McMillan, who on oath says that she is the Treasurer of The Telegraph Publishing Company, and that said Telegraph Publishing Company is the publisher of The Macon Telegraph, a newspaper published in the city of Macon, said newspaper being the official gazette of Bibb County, Georgia.

She further says that a certified copy of the above and foregoing petition to revive the Charter of The Georgia Bar Association was published in the said Macon Telegraph newspaper on the following dates, to-wit: April tenth (10th), seventeenth (17th), twenty-fourth (24th), and May first (1st), 1907.

ESSIE McMILLAN,

Sworn to and subscribed before me, this the twenty-seventh day of May, 1907.

C. R. WRIGHT, N.P.,
Bibb County, Georgia.

IN BIBB SUPERIOR COURT, April Term, 1907.

The foregoing petition for the revival of the Charter of The Georgia Bar Association having been duly filed and presented to the undersigned as presiding Judge in open Court, and it appearing that the facts stated therein are true, and that said application is legitimately within the purview and intention of the statutes in such cases made and provided, and that the formalities required in such cases have been duly complied with, it is ordered and adjudged that the Charter of the said The Georgia Bar Association heretofore granted by order and judgment of this Court at the April Term, 1884, thereof be, and the same is, hereby revived and the said corporation as so revived shall stand clothed with all the powers and possessed of all the rights and be subject to all the debts, liabilities and burthens of the old corporation which is revived in it. This revival of said Charter to be for the period of twenty (20) years, with the right of renewal at the expiration of said period. Let this order be entered upon the minutes of Bibb Superior Court, and these proceedings be recorded as required by law. This twenty-seventh day of May, 1907.

W. H. FELTON, JR.

Judge Superior Court, Macon Circuit.

Clerk's Office, Superior Court.

GEORGIA—BIBB COUNTY.

I, Robert A. Nisbet, Clerk of the Superior Court of Bibb County, Georgia, do hereby certify that the above and foregoing four (4) type-written pages contain a true and complete copy of all the proceedings had in the said Superior Court connected with the revival of the Charter of "The Georgia Bar Association," as the same appears from the records and files of said Court.

Witness my official signature and the Seal of said Court, this the twenty-seventh day of May, 1907.

ROBERT A. NISBET,

Clerk Superior Court, Bibb County, Georgia.
(Seal Bibb Superior Court.)

CONSTITUTION and BY-LAWS
OF
THE GEORGIA BAR ASSOCIATION.

Revised by Special Committee Appointed at the
Annual Meeting of 1906.

Amended and adopted at the Twenty-Fourth Annual Meet-
ing, Tybee Island, May 30 and 31, 1907.

CONSTITUTION.

ARTICLE I.

The object of this Association shall be to advance the Science of Jurisprudence, promote the administration of Justice, uphold the honor of the profession of the law, and establish cordial intercourse among the members of the bar.

This Association shall be known as the Georgia Bar Association.

ARTICLE II.

All members of the bar of this State in good standing shall be eligible to membership in this Association.

The Governor, the Justices of the Supreme Court, Judges of the Court of Appeals, the Attorney General and the Judges of the Superior and City Courts of this State, and the Judges of the Federal Courts resident in this State, and the Clerks of the Supreme Court and of the Court of Appeals, shall, so long as they remain in office, be honorary members of this Association, with all the rights and privileges of regular members without liability for dues.

ARTICLE III.

The officers of this Association shall consist of a President, five Vice-Presidents, a Secretary and a Treasurer.

There shall also be an Executive Committee composed of the President, Secretary, Treasurer and four members to be chosen by the Association, one of whom shall be Chairman of the Committee.

These officers and the members of this Committee shall be elected at each annual meeting for the year ensuing; but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers and members of the Executive Committee so elected shall hold office from the adjournment of the meeting at which they are elected until the adjournment of the next succeeding annual meeting, and until their successors are elected and qualified according to the Constitution and By-Laws.

ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association upon the recommendation of the Executive Committee. All elections for members shall be by ballot. Five negative votes shall suffice to defeat an election to membership.

Except during the meetings of the Association, the Executive Committee shall have power to elect members of this Association.

ARTICLE V.

Each member shall pay five dollars (\$5.00) to the Treasurer as annual dues. Payment thereof shall be enforced as may be provided by the By-Laws.

ARTICLE VI.

By-Laws may be adopted, repealed or amended at any annual meeting of the Association, by a majority vote of the members present; provided, that the number voting for such amendment shall not be less than twenty-five.

ARTICLE VII.

The following committees shall be annually appointed:

1. On Legislation.
2. On Jurisprudence, Law Reform, and Procedure.
3. On Federal Legislation.
4. On Interstate Law.
5. On Legal Education and Admission to the Bar.
6. On Legal Ethics and Grievances.
7. On Membership.
8. On Memorials.
9. On Reception.

ARTICLE VIII.

A vacancy in any office or committee provided for by this Constitution shall be filled by appointment by the President, and the appointee shall hold office until the next meeting of the Association.

ARTICLE IX.

The Executive Committee, when the Association is not in session, shall be invested with all the powers of the Association needful to be exercised and not inconsistent with the Constitution and By-Laws of the Association.

ARTICLE X.

This Association shall meet annually at such time and place as the Executive Committee shall select, and those pres-

ent at such meeting, not less than twenty-five, shall constitute a quorum. The Secretary shall give thirty days' notice of the time and place of the meeting.

ARTICLE XI.

Any member of this Association may be suspended or expelled for misconduct in his relation to this Association or in his profession, on conviction thereof in such manner as may be provided by the By-Laws.

ARTICLE XII.

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made except upon the concurrent vote of at least thirty members.

ARTICLE XIII.

At the regular meetings of this Association the accredited representatives of the respective local bar associations upon the basis of one delegate from each association, and one additional delegate for each ten members above the five necessary to organize, shall be entitled to all the privileges of regular members during such meetings except that they shall be denied the right to vote unless they are members of this Association. (Adopted June 4th, 1909.)

ARTICLE XIV.

There shall be published in the annual report of the proceedings of this Association a list of all local associations in this State which may be affiliated with this Association, showing the name, location, officers and number of members of such associations and the delegates selected to represent such local associations at the annual meeting of this Association, with such other facts regarding said associations as the Executive Committee may from time to time see fit to publish. (Adopted June 4th, 1909.)

BY-LAWS.

ARTICLE I.

The President shall preside at all the meetings of the Association, and shall open each meeting with an annual address.

In case of his absence, one of the Vice-Presidents shall preside.

ARTICLE II.

The Secretary shall keep a record of all meetings of the Association, and of all matters of which a record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association. He shall notify the officers and members of their election, shall keep a roll of the members, and shall issue notices of all meetings. His salary shall be three hundred dollars (\$300.00) *per annum*.

ARTICLE III.

The Treasurer shall collect, and under the direction of the Executive Committee, disburse all funds of the Association. He shall report annually, and oftener if required. He shall keep regular accounts, which shall at all times be open to the inspection of members of the Association. His accounts shall be audited by the Executive Committee. He shall execute a bond with good and sufficient security, to be approved by the President, payable to the President and his successors in office, in the sum of two thousand dollars (\$2,000.00) for the use of the Association, and conditioned that he will well and faithfully perform the duties of the office. The cost of this bond shall be paid by the Association. The Treasurer's salary shall be one hundred and fifty dollars (\$150.00) *per annum*.

ARTICLE IV.

The Executive Committee shall meet upon the call of the Chairman. They shall arrange the program for the annual meetings and make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of their proceedings, and shall report at the annual meeting of the Association. They shall examine and report upon all matters proposed to be published by the authority of the Association, and attend to the publication and distribution of the same.

ARTICLE V.

At each annual, stated or adjourned meeting of the Association the order of business shall be prescribed by the Executive Committee, except as provided in these By-Laws. This order of business may be changed by the vote of a majority of the members present.

ARTICLE VI.

All applications for membership in the Association shall be in writing, signed by the applicant, and addressed to the Executive Committee. The application shall be endorsed by a member of the Association, and shall be accompanied by the first year's dues.

ARTICLE VII.

In pursuance of Article VII of the Constitution, there shall be the following standing committees:

1. A Committee on Legislation, consisting of three members, to be appointed by the President during the session of the Association. This committee shall prepare for legis-

lative action such matters requiring legislation as may have received the approval of the Association. It shall further be the duty of this committee to make due presentation of such proposed legislation to the appropriate legislative committees or bodies.

2. A Committee on Jurisprudence, Law Reform, and Procedure, who shall be charged with the duty of reporting such amendments of the law as in their opinion should be adopted and of scrutinizing all proposed changes in the law, and when necessary reporting upon the same. It shall also be the duty of this committee to observe the practical working of the judicial system of this State and recommend such changes therein as observation or experience may suggest.

3. A Committee on Federal Legislation, who shall be charged with the duty of reporting upon such Federal Legislation proposed or enacted as may be of interest to the legal profession, and especially such as affects the Federal judicial system, procedure and practice in the Federal Courts.

4. A Committee on Interstate Law, who shall be charged with the duty of bringing to the attention of the Association such action as shall be proposed, looking to the promotion of greater uniformity in the laws of the several States on subjects of common interest.

5. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what changes are expedient in the system and mode of legal education, and of admission to the practice of the profession in the State of Georgia.

6. A Committee on Legal Ethics and Grievances, who shall be charged with the duty of considering and reporting upon matters relating to the ethics of the profession, and of taking such action as the Association may direct, in case of departure from these principles by any member of this Association and of hearing all complaints which may be made in matters affecting the interest of the legal profession or the professional conduct of any member of this Association or the

administration of justice, and reporting the same to the Association, with such recommendations as they may deem advisable. Said Committee shall, on behalf of the Association, institute and carry on such proceedings against such offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Executive Committee out of the funds of the Association.

7. A Committee on Membership, who shall take such action as may be best in their judgment to increase the membership of the Association.

8. A Committee on Memorials, who shall prepare and furnish to the Secretary brief, appropriate notices of members who have died during the year preceding each annual meeting, such notices not to exceed one page of printed matter, and to be published in the annual report. They shall also prepare or secure annually at least one biographical sketch of some deceased member of the bench or bar of Georgia, having special reference to his professional career, and have the same presented at the annual meeting.

9. A Committee on Reception, who shall be charged with the duty at all meetings of the Association of promoting social intercourse and fraternity among the members.

ARTICLE VIII.

Each of the standing committees, except the Committee on Legislation, shall consist of five members, and shall be appointed annually by the President of the Association, and a list thereof and of all special committees shall be transmitted by the President to the Secretary within thirty days from the adjournment of each annual meeting. The Secretary shall within thirty days after receipt thereof from the President, notify each committeeman of his appointment, giving a full list of his committee.

ARTICLE IX.

The Standing Committee on Jurisprudence, Law Reform, and Procedure, shall furnish the Secretary, at least thirty days

before each annual meeting, with a draft of their report, which is to be submitted at the meeting. The Secretary shall on receipt of said report, have the same printed and distributed to the members of the Association at least ten days before the date fixed for the annual meeting.

ARTICLE X.

Whenever a complaint shall be preferred against a member of the Association for misconduct in his relation to the Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Legal Ethics and Grievances, in writing, subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The Committee shall thereupon examine the complaint and if they are of the opinion that the matters therein mentioned are of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than ten days, of the time and place when the Committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his office, during office hours, properly addressed to him.

If after hearing his explanation the Committee shall deem it proper that there be a trial of the charge, they shall cause similar notice of ten days, of the time and place of the trial, to be served on the party complained of. The mode of procedure upon the trial of such complaint shall conform as nearly as may be to the provisions of sections 4431 to 4445, inclusive, of the Civil Code of Georgia.

ARTICLE XI.

The Treasurer is authorized to pay the actual expenses of the members of the Executive and other standing committees of the Association in attending meetings called by the chairmen of the respective committees upon the rendition to the

Treasurer of an itemized account of such expenses, approved by the chairman.

ARTICLE XII.

A part of the order of business of the first day of the annual meeting of the Association shall be the election of a committee on Nominations, consisting of five members, who shall be charged with the duty of reporting to the Association during the second day's session thereof, nominations for the officers of the Association, and members of the Executive Committee, to be selected at that meeting, but nothing herein provided shall prevent nominations of candidates to fill the respective offices, to be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name.

All elections, whether to office or to membership, shall be by ballot, and a majority of the votes cast shall be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

ARTICLE XIII.

The dues of the Association shall be payable on or before the first day of May for each year, and any member failing to pay his dues shall be in default, and if such default continues for three years, the name of such member shall be stricken from the roll of membership. Applications for reinstatement may be made and granted on such terms as may be deemed best by the Executive Committee.

The Treasurer shall on the 15th day of April of each year, inform each member of the Association that on the first day of May next, the Treasurer will draw at sight on said member for the amount due by him to the Association, and on the first day of May following, the Treasurer shall so draw for such dues upon each and every member of the Association who may at that time be indebted to the Association.

ARTICLE XIV.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon payment of all dues to the Association, and from the date of the receipt by the Secretary of a notice of resignation with an endorsement thereon by the Treasurer that all dues have been paid as above provided, the person giving such notice shall cease to be a member of the Association.

ARTICLE XV.

Whenever an active member of the Association shall, by reason of his election or appointment, become an honorary member *ex officio*, as provided by the Constitution, the Secretary shall transfer the name of such member from the roll of active members to the roll of honorary members, and shall re-transfer the name to the active roll when such member shall no longer be entitled to honorary membership.

ARTICLE XVI.

If the Executive Committee shall determine that it is necessary for the Association to hold any meeting other than the annual meeting, during the year, the same shall be held at such time and place as the Executive Committee may fix, notice of which shall be given by the Secretary.

ARTICLE XVII.

All addresses, reports and other papers read at any meeting of the Association shall be transmitted to the Secretary within thirty days from the adjournment of such meeting, and if not so furnished, the Executive Committee will proceed to publish the proceedings without such papers.

ARTICLE XVIII.

No resolution complimentary to any paper or address or to any member or officer shall be entertained.

ARTICLE XIX.

Whenever any member of this Association shall have been disbarred by the final judgment of a court, he shall *ipso facto* cease to be a member of this Association, and the Secretary shall notify him that his name has been dropped from the roll. (Adopted May 30, 1912. See Report of 1912, pp. 9-13.)

RESOLUTIONS ADOPTED JULY 2, 1905.

WHEREAS, It is desirable to have as large an attendance as practicable of the lawyers of the State upon the annual sessions of this Association; and,

WHEREAS, Many members of the bar of the State are prevented from attending the annual convention by reason of the fact that many of the courts of the State are in session at the time of the meeting of the Bar Association; therefore, be it

Resolved, first, That the judges of the several courts of this State be, and they are, hereby respectfully requested to so arrange their calendars and terms of court as that the members of the Bar of the several courts of the State may have an opportunity to attend the annual sessions of this Association.

Resolved, second, That as soon as the Executive Committee of this Association decides upon the time and place of meeting of this Association, each year, the Secretary of this Association shall as early as practicable thereafter notify each of the judges of the several courts of the State of the time and place of meeting of the Association, and respectfully urge a compliance with the above request.

OFFICERS
OF
THE GEORGIA BAR ASSOCIATION
FOR PAST TERMS.

1883-1884.

President
L. N. WHITTLE.

Vice-Presidents

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GEORGIA BAR ASSOCIATION

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2—POPE BARROW.

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5—E. N. BROYLES.

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President

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1889-1890.

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President

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Wright Willingham	Rome
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AMERICAN BAR ASSOCIATION CANONS OF PROFESSIONAL ETHICS.

Adopted by the Georgia Bar Association, June 4, 1909.

"There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step and the mere youth, at the very outset of his career, needs often the prudence and self-denial as well as the moral courage, which belongs commonly to riper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."—*George Sharswood.*

"Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. Falsehood is professional apostasy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wildest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty, not success. In it, as elsewhere, in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the Bench and of the Bar."—*Edward G. Ryan.*

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it."—*Abraham Lincoln.*

[NOTE.—The following Canons of Professional Ethics were adopted by the American Bar Association at its thirty-first annual meeting at Seattle, Washington, on August 27, 1908, and by the Georgia Bar Association, at its twenty-sixth annual meeting at Warm Springs, Georgia, on June 4, 1909.

The Canons were prepared by a committee composed of Henry St. George Tucker, Virginia, Chairman.

Lucien Hugh Alexander, Pennsylvania, Secretary.

David J. Brewer, District of Columbia.

Frederick V. Brown, Minnesota.

J. M. Dickinson, Illinois.

Franklin Ferriss, Missouri.

William Wirt Howe, Louisiana.

Thomas H. Hubbard, New York.

James G. Jenkins, Wisconsin.

Thomas Goode Jones, Alabama.

Alton B. Parker, New York.

George R. Peck, Illinois.

Francis Lynde Stetson, New York.

Ezra R. Thayer, Massachusetts.]

I.

PREAMBLE.

In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It can not be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

II.

THE CANONS OF ETHICS.

No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned:

1. *The Duty of the Lawyer to the Courts.* It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

2. *The Selection of Judges.* It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. *Attempts to Exert Personal Influence on the Court.* Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

4. *When Counsel for an Indigent Prisoner.* A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. *The Defense or Prosecution of Those Accused of Crime.* It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

6. *Adverse Influences and Conflicting Interests.* It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

7. *Professional Colleagues and Conflicts of Opinion.* A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause can not agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is the duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

8. *Advising Upon the Merits of a Client's Cause.* A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is

subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

9. *Negotiations With Opposite Party.* A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. *Acquiring Interest in Litigation.* The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

11. *Dealing with Trust Property.* Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

12. *Fixing the Amount of the Fee.* In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay can not justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction,

and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

13. *Contingent Fees.* Contingent fees, where sanctioned by law, should be under the supervision of the Court, in order that clients may be protected from unjust charges.

14. *Suing a Client for a Fee.* Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

15. *How Far a Lawyer May Go in Supporting a Client's Cause.* Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights

and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of the client.

16. *Restraining Clients from Improprieties.* A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation.

17. *Ill Feeling and Personalities Between Advocates.* Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. *Treatment of Witnesses and Litigants.* A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client can not be made the keeper of the

lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

19. *Appearance of Lawyer as Witness for His Client.* When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client.

20. *Newspaper Discussion of Pending Litigation.* Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any *ex parte* statement.

21. *Punctuality and Expedition.* It is the duty of the lawyer not only to his client, but also to the Courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

22. *Candor and Fairness.* The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of the witness, the language or argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding

positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

23. *Attitude Toward Jury.* All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. *Right of Lawyer to Control the Incidents of the Trial.* As to the incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do any-

thing therein repugnant to his own sense of honor and propriety.

25. *Taking Technical Advantage of Opposite Counsel; Agreements With Him.* A lawyer should not ignore known customs or practice of the Bar or of a particular court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of court.

26. *Professional Advocacy Other Than Before Courts.* A lawyer openly, and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. *Advertising, Direct or Indirect.* The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This can not be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business

by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's position, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

28. *Stirring up Litigation, Directly or Through Agents.* It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

29. *Upholding the Honor of the Profession.* Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in

either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

30. *Justifiable and Unjustifiable Litigations.* The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the court as to the legal merits of his client's claim. His appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

31. *Responsibility for Litigation.* No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into court for plaintiffs, what causes he will contest in court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He can not escape it by urging as an excuse that he is only following his client's instructions.

32. *The Lawyer's Duty in Its Last Analysis.* No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice

tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

III.

OATH OF ADMISSION.

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the State of Washington, and which conforms in its main outlines to the "duties" of lawyers as defined by statutory enactments in that and many other States of the Union*—duties which they are sworn on admission to obey and for the wilful violation of which disbarment is provided:

I DO SOLEMNLY SWEAR:

I will support the Constitution of the United States and the Constitution of the State of _____;

I will maintain the respect due to Courts of Justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such

*Alabama, California, Georgia, Idaho, Indiana, Iowa, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wisconsin. The oaths administered on admission to the Bar in all the other States require the observance of the highest moral principle in the practice of the profession, but the duties of the lawyer are not as specifically defined by law as in the States named.

as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD.

We recommend this form of oath for adoption by the proper authorities in all the States and Territories.

INDEX AND SYNOPSIS OF CANONS.

PREAMBLE.

THE CANONS OF ETHICS.

1. The Duty of the Lawyer to the Courts.
 2. The Selection of Judges.
 3. Attempts to Exert Personal Influence on the Court.
 4. When Counsel for an Indigent Prisoner.
 5. The Defense or Prosecution of Those Accused of Crime.
 6. Adverse Influences and Conflicting Interests.
 7. Professional Colleagues and Conflicts of Opinion.
 8. Advising upon the Merits of a Client's Cause.
 9. Negotiations with Opposite Party.
 10. Acquiring Interest in Litigation.
 11. Dealing with Trust Property.
 12. Fixing the Amount of the Fee.
 13. Contingent Fees.
 14. Suing a Client for a Fee.
 15. How Far a Lawyer May Go in Supporting a Client's Cause.
 16. Restraining Clients from Improprieties.
 17. Ill Feeling and Personalities Between Advocates.
 18. Treatment of Witnesses and Litigants.
 19. Appearance of Lawyer as Witness for His Client.
 20. Newspaper Discussion of Pending Litigation.
 21. Punctuality and Expedition.
 22. Candor and Fairness.
 23. Attitude Toward Jury.
 24. Right of Lawyer to Control the Incidents of the Trial.
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 26. Professional Advocacy Other than Before Courts.
 27. Advertising, Direct or Indirect.
 28. Stirring Up Litigation, Directly or Through Agents.
 29. Upholding the Honor of the Profession.
 30. Justifiable and Unjustifiable Litigation.
 31. Responsibility for Litigation.
 32. The Lawyer's Duty in Its Last Analysis.
- ### OATH OF ADMISSION.

**OFFICERS
OF
THE AMERICAN BAR ASSOCIATION
FOR 1916-1917.**

President

GEORGE SUTHERLAND, Salt Lake City, Utah.

Secretary

GEORGE WHITELOCK, Baltimore, Md.

Assistant Secretaries

W. THOMAS KEMP, Baltimore Md.

GAYLORD LEE CLARK, Baltimore, Md.

Treasurer

FREDERICK E. WADHAMS, Albany, N. Y.

Vice-President for Georgia

T. A. HAMMOND, Atlanta.

Member of General Council for Georgia.

J. HANSELL MERRILL, Thomasville.

Local Council

WILLIAM H. BARRETT, Augusta.

SAM S. BENNET, Albany.

ORVILLE A. PARK, Macon.

WM. A. WIMBISH, Atlanta.

MEMBERS OF GEORGIA BAR ASSOCIATION WHO ARE MEMBERS OF AMERICAN BAR ASSOCIATION.

This List is revised from the 1915 Report of the American Bar Association.

Adams, J. S., Dublin	King, Alexander C., Atlanta
Adams, Samuel B., Savannah	Kline, Alfred R., Moultrie
Arnold, Reuben R., Atlanta	Kontz, Ernest C., Atlanta
Atkinson, Spencer R., Atlanta	Lambdin, William W., Waycross
Barrett, Wm. H., Augusta.	Latimer, W. Carroll, Atlanta
Bennet, Sam S., Albany	Lawrence, Alexander A., Savannah
Black, Eugene R., Atlanta	Lawson, Harley F., Hawkinsville
Branch, Lee W., Quitman	Lawton, Alexander R., Savannah
Brandon, Morris, Atlanta	Leaken, William R., Savannah
Bryan, Shepard, Atlanta	Lovett, A. B., Sylvania
Cann, J. Ferris, Savannah	Luke, Roscoe, Thomasville
Charlton, Walter G., Savannah	MacIntyre, Wm. I., Thomasville
Chastain, Edward S., Nashville	Mackall, Wm. W., Savannah
Clay, William Law, Savannah	Maddox, George E., Rome
Cobb, Andrew J., Athens	Mayer, Albert E., Atlanta
Crovatt, A. J., Brunswick	McAlpin, Henry, Savannah
Crum, D. A. R., Cordele	McElreath, Walter, Atlanta
Cunningham, Henry C., Savannah	McWhorter, Hamilton, Athens
Cunningham, T. M., Jr., Savannah	Meldrim, Peter W., Savannah
Elliott, Edw. Stiles, Savannah	Merrill, Jos. Hansell, Thomasville
Fish, William H., Atlanta	Miller, A. L., Macon
Flynt, Roger D., Dublin	Morris, Sylvanus, Athens
Fortson, Blanton, Athens	Newman, Wm. T., Atlanta
Fulwood, C. W., Tifton	O'Byrne, M. A., Savannah
Gazan, Simon N., Savannah	Oliver, Frank M., Savannah
Gignilliatt, Wm. R., Savannah	Owens, Geo. W., Savannah
Gilbert, James H., Atlanta	Pardee, Don A., Atlanta
Goetchius, Henry R., Columbus	Park, Orville A., Macon
Gordon, William W., Savannah	Payton, Claude, Sylvester
Hammond, Theodore A., Atlanta	Peeples, Henry C., Atlanta
Hammond, William R., Atlanta	Pope, John D., Albany
Harris, Walter A., Macon	Porter, J. H., Atlanta
Hawes, T. S., Bainbridge	Pottle, J. R., Albany
Hill, H. W., Atlanta	Randolph, Hollins N., Atlanta
Hofmayer, I. J., Albany	Rogers, Z. B., Elberton
Hull, James M., Jr., Augusta	Rosser, Luther Z., Atlanta
Irvin, I. T., Jr., Washington	Rourke, John, Jr., Savannah
Johnson, Henry Wiley, Savannah	Russell, R. B., Atlanta
Jones, George S., Macon	Seabrook, Paul E., Savannah

Smith, Alexander W., Sr., Atlanta	Thomson, W. D., Atlanta
Smith, Burton, Atlanta	Tye, Benjamin W., Atlanta
Smith, John R. L., Macon	Tye, John L., Atlanta
Smith, O. M., Valdosta	Tyson, Charles M., Darien
Smith, Victor Lamar, Atlanta	Wade, Peyton L., Atlanta
Speer, Emory (Mt. Airy), Macon	Watkins, Edgar, Atlanta
Stephens, Alexander W., Atlanta	(Washington, D. C.)
Stephens, William B., Savannah	Wilkinson, H. A., Dawson
Stevenson, W. A., Commerce	Willingham, Wright, Rome
Strickland, John J., Athens	Wright, Barry, Rome
Sweat, J. L., Waycross	

Applications for membership in the American Bar Association may be made to any member of the Local Council, whose names will be found on page 421.

SUGGESTED CONSTITUTION FOR LOCAL BAR ASSOCIATION.

Affiliated with Georgia Bar Association.

ARTICLE I.

The object of this Association shall be to advance the science of jurisprudence, promote the administration of justice, uphold the honor and the profession of the law, and establish cordial intercourse among the members of the bar.

**This Association shall be known as the-----,
and located at-----, -----.**

ARTICLE II.

All members of the bar of-----County (or Counties), in good standing, shall be eligible to membership in this Association. All who sign the Constitution at the time of the organization hereunder shall become members. All others may become members as hereinafter provided. All Judges of Courts of Record residing in said county, so long as they remain in office, shall be honorary members of this Association, with all rights and privileges of regular members, without liability for dues.

ARTICLE III.

The officers of this Association shall consist of a President, Vice-President, and Secretary and Treasurer, and an Executive Committee, to be composed of said officers and—others to be chosen by the Association,—one of whom shall be Chairman of the Committee. These officers and the members

of this committee shall be elected at each annual meeting for the year ensuing; but the same person shall not be elected President two years in succession. All such elections shall be by ballot. The officers and members of the Executive Committee so elected shall hold office from the adjournment of the meeting at which they are elected until the adjournment of the next succeeding annual meeting, and until their successors are elected and qualified according to the Constitution and By-Laws.

ARTICLE IV.

At the meetings of the Association all elections to membership shall be by the Association, upon the recommendation of the Executive Committee. All elections for membership shall be by ballot. Three negative votes shall suffice to defeat an election to membership. Except during the meetings of the Association, the Executive Committee shall have power to elect members of this Association, and upon subscribing to the Constitution and paying the fee they shall become active members.

ARTICLE V.

Each member shall pay-----dollars to the Treasurer as annual dues. Payment thereof shall be enforced as may be provided by the By-Laws. This payment for the first year shall be paid when the member subscribes to the Constitution.

ARTICLE VI.

By-Laws may be adopted, repealed or amended at any annual meeting of the Association by a majority vote of the members present; provided that the number voting for such by-law shall not be less than-----.

ARTICLE VII.

The following Committees shall be annually appointed:

1. On Legislation.
2. On Jurisprudence, Law Reform, and Procedure.
3. On Legal Education and Admission to the Bar.
4. On Legal Ethics and Grievances.
5. On Membership.
6. On Memorials.

ARTICLE VIII.

A vacancy in any office or committee provided for by this Constitution shall be filled by appointment, by the President; and the appointee shall hold office until the next meeting of the Association.

ARTICLE IX.

The Executive Committee, when the Association is not in session, shall be vested with all the powers of the Association needful to be exercised and not inconsistent with the Constitution and By-Laws of the Association.

ARTICLE X.

This Association shall meet annually at such time and place as the Executive Committee shall elect; and those present at such meeting, not less than five, shall constitute a quorum. The Secretary shall give notice of the time and place of meeting. In addition to this the President and the Executive Committee, may call such special meetings as may be necessary, from time to time.

ARTICLE XI.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession on conviction thereof in such manner as may be provided by the By-Laws.

ARTICLE XII.

This Constitution may be altered or amended by vote of three-fourths of the members present at any annual meeting; but no such change shall be made except upon the concurrent vote of at least a majority of all the members of the Association.

ARTICLE XIII.

The Code of Ethics of the Georgia Bar Association is the Code of Ethics of this Association, and binding upon the members thereof.

ARTICLE XIV.

Such By-Laws may be passed as will meet the necessities of this Association. Said By-Laws, however, not to be inconsistent with the By-Laws of the Georgia Bar Association.

ARTICLE XV.

At each annual meeting of this Association delegates to the Georgia Bar Association shall be elected, with an equal number of alternates, according to the representation to which this Association is entitled. Said election to be by ballot as may be provided by the By-Laws. The Secretary to give such delegates a certificate of their election as their credentials to represent this Association in the meeting of the Georgia Bar Association.

ARTICLE XVI.

It shall be the duty of the Secretary of this Association, at least twenty days before the time fixed for the annual meeting of the Georgia Bar Association, to furnish to the Secretary of that Association a report giving the names of the officers of this Association, the number of members, the names of any members who may have died during the preceding year, and the number of new members elected during the year, together with any other facts of general interest and any additional information which may be called for by the Secretary of the said Georgia Bar Association. The Secretary shall also furnish to the Secretary of the Georgia Bar Association the names of the delegates elected to represent this Association at the annual meeting of that Association.

LOCAL BAR ASSOCIATIONS IN GEORGIA.

This list was compiled from information obtained from the Secretaries of the Associations. The Secretary will be glad to be furnished with any additions, corrections or changes in the list.

Americus Bar Association.

<i>President</i>	<i>Vice-President</i>
E. A. NISBET	L. J. BLALOCK.
<i>Secretary and Treasurer</i> —HOLLIS FORT.	

Bar Association of Ashburn.

<i>President</i>	<i>Vice-President</i>
JOHN B. HUTCHERSON.	W. T. WILLIAMS.
<i>Secretary and Treasurer</i> —EDWIN A. RODGERS.	

Athens Bar Association.

<i>President</i>	<i>Vice-President</i>
HENRY S. WEST.	HORACE M. HOLDEN.
<i>Secretary and Treasurer</i> —JEROME MICHAEL.	

Atlanta Bar Association.

<i>President</i>	<i>Vice-Presidents</i>
SHEPARD BRYAN.	LEE M. JORDAN.
	LAWTON NALLEY.
<i>Secretary and Treasurer</i> —JOHN Y. SMITH.	

Augusta Bar Association.

<i>President</i>	<i>Vice-Presidents</i>
J. C. C. BLACK.	JOS. B. CUMMING.
	BOYKIN WRIGHT.
<i>Secretary</i>	<i>Treasurer</i>
GEO. T. JACKSON.	BRYSON CRANE.

LOCAL BAR ASSOCIATIONS

Brunswick Bar Association.

<i>President</i>	<i>Secretary and Treasurer</i>
JOS. W. BENNET.	EUSTACE C. BUTTS.

Calhoun County Bar Association.

<i>President</i>	<i>Vice-President</i>
J. J. BECK.	H. M. CALHOUN.
<i>Secretary</i>	<i>Treasurer</i>
J. L. BOYNTON.	E. L. SMITH.

Columbus Bar Association.

<i>President</i>	<i>Vice-President</i>
J. L. WILLIS.	S. B. HATCHER.
<i>Secretary and Treasurer</i> —S. M. DAVIS.	

Crisp County Bar Association.

<i>President</i>	<i>Secretary</i>
E. F. STROZIER.	J. GORDON JONES.

Decatur County Bar Association.

<i>President</i>	<i>Vice-President</i>
WM. M. HARRELL.	THOS. S. HAWES.
<i>Secretary and Treasurer</i> —JOHN R. WILSON.	

Dublin Bar Association.

<i>President</i>	<i>Vice-President</i>
J. E. BURCH.	J. A. THOMAS.
<i>Secretary and Treasurer</i> —R. D. FLYNT.	

Greene County Bar Association.

<i>President</i>	<i>Vice-President</i>
GEO. A. MERRITT.	JOS. P. BROWN.
<i>Secretary and Treasurer</i> —F. B. SHIPP.	

Bar Association of the City of Macon.

President—DUPONT GUERRY.

<i>Secretary</i>	<i>Treasurer</i>
WALLACE MILLER.	E. P. JOHNSTON.

Moultrie Bar Association.

<i>President</i>	<i>Secretary</i>
ROBT. L. SHIPP.	EDWIN L. BRYAN.

Oconee Circuit Bar Association.

<i>President</i>	<i>Treasurer</i>
M. B. CALHOUN.	D. D. SMITH.
<i>Vice-President</i>	<i>Secretary</i>
J. M. BLECKLEY.	W. C. McALLISTER.

Bar Association of Savannah.

<i>President</i>	<i>Vice-President</i>
H. C. CUNNINGHAM.	GEO. W. OWENS.
<i>Treasurer</i> —GEO. C. HEYWARD, JR.	

Spalding County Bar Association.

<i>President</i>	<i>Secretary and Treasurer</i>
WALTER C. BEEKS.	W. H. WHEATON.

Statesboro Bar Association.

<i>President</i>	<i>Secretary</i>
G. S. JOHNSON.	HOWELL CONE.

Tattnall County Bar Association.

<i>President</i>	<i>Secretary and Treasurer</i>
W. T. BURKHALTER.	S. B. McCALL.

Thomas County Bar Association.

<i>President</i>	<i>Vice-President</i>
J. HANSELL MERRILL	ROSCOE LUKE.
<i>Secretary and Treasurer</i> —J. E. CRAIGMILES.	

Troup County Bar Association.

President
FRANK HARWELL.

Secretary and Treasurer
E. A. JONES.

Waycross Bar Association.

President
J. L. SWEAT.

Vice-President
LEON A. WILSON.

Secretary and Treasurer—HARRY D. REED.

EXCHANGE LIST.

The Georgia Bar Association exchanges its publications with the following Associations:

ASSOCIATION.	SECRETARY.
American Bar Association-----	George Whitelock,
Baltimore, Md.	
Alabama State Bar Association-----	Alexander Troy,
Montgomery, Ala.	
Arizona Bar Association-----	J. E. Nelson,
Phoenix, Arizona.	
Bar Association of Arkansas-----	Roscoe R. Lynn,
Little Rock, Ark.	
California Bar Association-----	T. W. Robinson,
Los Angeles, Cal.	
Colorado Bar Association-----	Wm. H. Wadley,
Denver, Colo.	
State Bar Association of Connecticut----	James E. Wheeler,
New Haven, Conn.	
Delaware State Bar Association-----	T. Bayard Heisel,
Wilmington, Del.	
Bar Association of the District of Columbia-----	
Edwin L. Wilson, Washington, D. C.	
Florida State Bar Association-----	John C. Cooper, Jr.
Jacksonville, Fla.	
Bar Association of the Hawaiian Islands----	E. W. Sutton,
Honolulu, H. I.	
Idaho State Bar Association-----	Benjamin S. Crow,
Boise, Idaho.	
Illinois State Bar Association-----	John F. Voigt,
Mattoon, Ill.	
State Bar Association of Indiana-----	Geo. H. Batchelor,
Indianapolis, Ind.	
Iowa State Bar Association-----	H. C. Horack,
Iowa City, Iowa.	

ASSOCIATION.	SECRETARY.
Bar Association of the State of Kansas.....	D. A. Valentine,
Topeka, Kan.	
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ADDRESSES BY THE PRESIDENTS.

YEAR.	NAME.	SUBJECT.
1885.	WILLIAM M. REESE.....	The Constitutions of Georgia.
1886.	JOSEPH B. CUMMING.....	Lawyers, the Trustees of Public Opinion.
1887.	CLIFFORD ANDERSON.....	The Achievements of Lawyers.
1888.	WALTER B. HILL.....	Bar Associations.
1889.	MARSHALL J. CLARKE.....	A Study of the Judicial Character.
1890.	GEORGE A. MERCER.....	The Philosophy of Legal Biography.
1891.	FRANK H. MILLER.....	The Young Practitioners at the Georgia Bar.
1892.	JOHN PEABODY.....	Verdicts of Juries and New Trials.
1893.	WASHINGTON DESSAU.....	Trial by Jury.
1894.	LOGAN E. BLECKLEY.....	Causation (Poem).
1895.	WM. H. FLEMING.....	The Ethics of the Bar in Relation to the State.
1896.	JOHN W. PARK.....	Historical Sketch of Georgia as a Litigant in the Supreme Court of the United States.
1897.	HENRY R. GOETCHIUS.....	Litigation in Georgia During the Reconstruction Period.
1898.	JOHN W. AKIN.....	Aggressions of the Federal Courts.
1899.	HAMILTON McWHORTER.....	The Law, Its Courts and Ministers.
1900.	JOSEPH R. LAMAR.....	A Century's Progress in Law.
1901.	H. WARNER HILL.....	Historic Landmarks of the Law.
1902.	CHARLTON E. BATTLE.....	The Georgia-Tennessee Boundary Dispute.
1903.	BURTON SMITH	Trusts and Monopolies.
1904.	P. W. MELDRIM.....	Respect for the Law.
1905.	A. P. PERSONS.....	Some Kaleidoscopic Generalities.
1906.	T. A. HAMMOND.....	Is There a Growing Disposition or Tendency to Disregard or Evade the Law?
1907.	A. L. MILLER.....	Some Friendly Suggestions to Young Lawyers.
1908.	SAMUEL B. ADAMS.....	Lawlessness.
1909.	JOSEPH HANSELL MERRILL.....	The Condition of our Courts, and Their Standing with the Public; the Cause and Remedy.
1910.	T. M. CUNNINGHAM, JR.....	Problems of the Hour.

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1911.	JOEL BRANHAM.....	Brevity and Reform.
1912.	ALEX. W. SMITH.....	Signs of the Times.
1913.	ANDREW J. COBB.....	Reverence and Relevancy.
1914.	ROBERT C. ALSTON.....	Development of the Federal Constitution.
1915.	SAM S. BENNET.....	The Lawyer's Place in the Industrial Army.
1916.	GEORGE W. OWENS.....	Law Enforcement.

ANNUAL ADDRESSES.

1884.	ALEXANDER R. LAWTON.....	The Character and Mission of the Lawyer.
1887.	THOS. M. COOLEY.....	The Uncertainty of the Law.
1888.	SEYMOUR D. THOMPSON.....	More Justice and Less Technicality.
1895.	WILLIAM B. HORNELOWER.....	The Past, Present, and Future of our Constitutional System.
1897.	SIMMON E. BALDWIN.....	Absolute Power, An American Institution.
1899.	WILLIAM L. WILSON.....	The Increasing Difficulties of American Democratic Government.
1900.	CHARLES NOBLE GREGORY.....	American Lawyers and Their Making.
1901.	LUCIUS Q. C. LAMAR.....	The Development and Present Status of the Law in Cuba.
1902.	HORACE H. LUTON.....	The Evolution of the American Law of Constitutional Limitations.
1903.	ALTON B. PARKER.....	Due Process of Law.
1905.	J. C. McREYNOLDS.....	Somewhat Concerning Aliens.
1906.	WM. TRAVERS JEROME.....	Public Opinion, Its Power, Some of Its Evils, and Injustices, and Our Duty as Lawyers to It.
1907.	CHAMP CLARK.....	The Country Lawyer as a Factor in Public Affairs.
1908.	J. H. LUMPKIN.....	Substance and Shadow in the Law.
1909.	HANNIS TAYLOR.....	Pelatiah Webster, the Architect of the Federal Constitution.
1910.	WM. M. IVINS.....	Judicial Economic Theory and the Duty of the Bar.
1911.	W. A. BLOUNT.....	The Passing of Individual Rights of Property.
1912.	CARUTHERS EWING.....	The Spirit of the Times.
1913.	JOSEPH R. LAMAR.....	The Bench and Bar of Georgia During the Eighteenth Century.
1914.	ALEXANDER P. HUMPHREY.....	The Tribunal of the Terror.
1915.	EUGENE C. MASSIE.....	Commercial Land Titles.
1916.	HAMPTON L. CARSON.....	The Proper Place of Precedent in Our Judicial System.

ADDRESSES AND PAPERS.

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1884.	CHARLES C. JONES.....	Compensation of the Judiciary.
1884.	JOHN W. PARK.....	The British Constitution.
1884.	L. F. GARRARD.....	<i>Habeas Corpus.</i>
1885.	JOHN T. CLARK.....	Appellate Courts.
1885.	SAMUEL HALL.....	The Jury System.
1885.	ALEXANDER C. KING.....	A Sketch of the History of Land Titles in Georgia.
1886.	POPE BARROW.....	The Federal Judiciary.
1886.	LOGAN E. BLECKLEY.....	Truth at the Bar.
1886.	GEORGE A. MERCER.....	Receiverships of Corporations.
1886.	A. MINIS, JR.....	The Relation of Attorney and Client.
1886.	WALTER B. HILL.....	Delays in the Administration of (Ch'm. Special Committee.) Justice.
1887.	JOHN W. AKIN.....	The Circuit Judge.
1887.	I. E. SHUMATE.....	Professional Responsibility.
1887.	R. S. LANIER.....	Usury as Affecting Securities for Debt.
1887.	H. E. W. PALMER.....	The Evidence Act of 1866.
1888.	WALTER GREGORY.....	The Funny Side of the Law.
1888.	THOS. J. CHAPPELL.....	Open Questions.
1888.	A. H. DAVIS.....	On Sealed Instruments.
1888.	{ CLEM P. STEED A. MINIS, JR. }	Should the Law Regarding Im- provements in Ejectment be Modified; if so, How?
1889.	WALTER B. HILL.....	The Federal Judicial System. (Chairman Committee on Federal Legislation.)
1889.	LOGAN E. BLECKLEY.....	Law as a Rule of Feeling.
1890.	CLAUD ESTES.....	Excessive Legislation a Cause of Judicial Inefficiency and an Element of Political Weakness.
1890.	FRANCIS D. PEABODY.....	The Unanimity Rule in Making Verdicts.
1890.	FRANK H. MILLER.....	Dissolution of Corporations by Re- peal and Forfeiture.
1890.	RICHARD H. CLARK.....	History of the First Georgia Code.
1891.	E. W. MARTIN.....	The Perfection of Right, which is Justice, the Ideal Law.
1891.	H. A. MATHEWS.....	The Property Rights of Married Women: Is Additional Legisla- tion Needed?
1891.	J. M. MOBLEY.....	Law Reform and Changes.
1892.	LOGAN E. BLECKLEY.....	Emotional Justice.

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1892.	J. R. LAMAR.....	Georgia's Contribution to Law Reform.
1892.	A. H. DAVIS.....	Declarations As Part of <i>Res Gestae</i> .
1892.	B. F. ABBOTT.....	Bankrupt Laws.
1892.	J. H. MARTIN.....	Ejectment Pleading and Practice.
1893.	CHARLES H. SMITH..... (Bill Arp.)	Some Recollections of Law and Lawyers of Other Days.
1893.	LIONEL C. LEVY.....	The Nicaragua Canal: Constitutionality of its Financial Aid and Control by the United States Government.
1893.	A. H. McDONELL.....	Discretion in Punishment.
1893.	LOGAN E. BLECKLEY.....	The Future of Woman at the Georgia Bar.
1893.	H. R. GOETCHIUS.....	The Attestation of Deeds.
1893.	{ W. M. REESE J. J. STRICKLAND H. W. HILL W. H. FLEMING I. E. SHUMATE }	How Should the Judiciary be Chosen, and Why?
1893.	A. C. KING.....	What Reforms are Most Needed in Remedial Procedure in Georgia?
1894.	{ W. T. TURNBULL J. L. SWEAT B. B. BOWER }	Our Judicial System—Is it Defective? If so, Wherein?
1894.	WILLIAM C. GLENN.....	The Practical Uses of the Roman Law.
1894.	{ A. J. CROVATT L. Z. ROSSER R. R. ARNOLD }	Qualifications for Admission to the Bar.
1894.	{ F. D. PEABODY N. J. HAMMOND F. H. MILLER }	The Insolvent Traders' Receivership Act.
1894.	{ BURTON SMITH A. H. DAVIS }	Woman at the Georgia Bar.
1895.	ALEX. C. KING.....	The <i>Ultra Vires</i> Acts of Corporations.
1895.	JOHN W. AKIN.....	The Poet Bleckley.
1895.	WASHINGTON DESSAU.....	A Comparative View of State Constitutions.
1895.	{ W. W. GORDON, JR. J. HANSELL MERRILL }	Relief of the Supreme Court of Georgia: Is the Remedy One or More Intermediate Courts?
1895.	H. H. PERRY.....	A Dual Organization.
1895.	J. H. BLOUNT, JR.....	Three Great Codifiers.

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1895.	W. A. WIMBISH.....	Literary Property.
1896.	N. J. HAMMOND.....	Georgia Driftwood.
1896.	F. D. PEABODY.....	The Selection of the Judiciary.
1896.	HENRY R. GOETCHIUS.....	The Lynch Law Tree. (Extracts from the Green Bag.)
1896.	WALTER B. HILL..... (Chairman Committee.)	Legal Ethics.
1896.	ALBERT H. RUSSELL.....	Supreme Court Practice; Defects and Remedies.
1897.	LOGAN E. BLECKLEY.....	The Judge as a Factor in Trials of Fact.
1897.	CHARLES J. SWIFT.....	Practical and Legal Aspects of Hawaiian Annexation.
1897.	{ H. T. LEWIS LEWIS W. THOMAS JOHN C. McDONALD G. P. MUNRO BURTON SMITH }	Is Lynch Law Due to Defects in the Criminal Law, or its Ad- ministration?
1897.	W. C. GLENN.....	The Reform of Criminal Pro- cedure.
1897.	C. C. SMITH.....	Interesting Professional Experi- ences.
1897.	J. CARROLL PAYNE.....	A Celebrated Case—The Myra Clark Gaines Litigation.
1897.	JAS. BISHOP, JR.....	How Should Our Circuit Judges Be Chosen?
1897.	C. J. THORNTON.....	Wit and Humor of the Georgia Bar.
1897.	WM. M. REESE.....	Reminiscences.
1898.	ORVILLE A. PARK.....	The Dumb Act of 1850.
1898.	F. P. LONGLEY.....	Proposed Amendment to the Con- stitution Providing for the Elec- tion of Judges and Solicitors by the People.
1898.	JOSEPH R. LAMAR.....	Georgia Law Books.
1898.	CHARLES L. BASS.....	Wit and Humor of the Bar of the Georgia Mountains.
1898.	WILLIAM K. MILLER.....	Limitations of the Dartmouth College Case.
1898.	J. HANSELL MERRILL.....	Restriction of Elective Franchise.
1898.	{ H. W. HILL E. H. MYERS }	The Advisability of Decreasing Jury Exemptions.
1898.	ALBERT H. RUSSELL.....	Wit and Wisdom of Chief Justice L. E. Bleckley in the Georgia Reports.

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1898.	{ C. P. GOODYEAR WM. P. HILL ALEX. C. KING GEORGE M. NAPIER }	-----Should the Constitution of this State be Amended so as to Allow Municipal Corporations to Exempt New Factories from Taxation for a Term of Years?
1899.	JOHN L. HOPKINS.....	The Evolution of the Code.
1899.	JAMES B. BAIRD.....	The Medical Witness—His Rights and His Wrongs in Courts of Justice.
1899.	S. P. GILBERT.....	The Growth of Criminal Law.
1899.	LOGAN E. BLECKLEY.....	The Law and the Irrelevant.
1899.	WASHINGTON DESSAU.....	Admission to the Bar in Georgia.
1899.	ORVILLE A. PARK.....	What the Others Are Doing. A Review of the Current Reports of the Bar Associations of the United States.
1899.	JOHN J. STRICKLAND.....	Are the Courts Responsible for Lynchings, and if so, Why?
1899.	J. F. DELACY.....	The Necessity of Reforms in the Criminal Law.
1899.	EDWARD THOMPSON.....	The Relation of Religion to Our Government.
1899.	SPENCER R. ATKINSON.....	Shall the Public Justice be Judicially Administered.
1900.	{ F. D. PEABODY J. B. BURNSIDE FRANK HARWELL CLEM P. STEED }	-----The Dumb Act of 1850.
1900.	ALEXANDER R. LAWTON.....	Some Characteristics of Military Law.
1900.	MARCUS W. BECK.....	Juries and Jury Trials.
1900.	WALTER B. HILL.....	The Biological Law of Infancy.
1900.	WILLIAM WIRT HOWE.....	The Law of Primitive People.
1900.	LOGAN E. BLECKLEY.....	Human Seniority.
1900.	PAUL F. AKIN.....	Municipal Ownership of Light, Water and Transportation Systems.
1901.	REUBEN R. ARNOLD.....	Delays and Technicalities in the Administration of Justice.
1901.	J. C. C. BLACK.....	Law and Lawyers.
1901.	W. A. WIMBISH.....	The Ancillary Jurisdiction of Federal Courts of Equity.
1901.	J. HANSELL MERRILL.....	The Bible in the Lawyer's Library.
1901.	ROLAND ELLIS.....	The Criticism of Courts.
1901.	SHEPARD BRYAN.....	Defects in the Law of Georgia Regulating Private Corporations.

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1901.	C. A. TURNER.....	The Six Characters in the Trial of Causes.
1901.	MRS. J. RENDER TERRELL.....	The Georgia Lawyer as Viewed by a Woman.
1901.	WILLIAM L. SCRUGGS.....	Evolution of American Citizenship.
1901.	SYLVANUS MORRIS.....	Pleading.
1901.	WALTER G. CHARLTON.....	A Lawyerless Court.
1901.	A. P. PERSONS.....	Public Opinion of the Law and of Lawyers.
1901.	{ ALBERT H. RUSSELL E. T. MOON A. W. EVANS W. W. BACON, JR. A. H. THOMPSON }	Defects in Justice Court Practice.
1901.	IRVIN ALEXANDER.....	The Correction of Errors in Justice Courts.
1902.	WALTER B. HILL.....	The History, Objects, and Achievements of the Georgia Bar Association.
1902.	ORVILLE A. PARK.....	The State Bar Associations in 1901.
1902.	{ ANDREW J. COBB WILLIAM K. MILLER }	The Judicial System of Georgia; Its Defects; What Changes Are Necessary to Bring About a More Harmonious and Orderly System and to Relieve the Supreme Court.
1902.	ROBERT C. ALSTON.....	The Effect Which United States Courts Will Give to the Decisions of State Courts.
1903.	WASHINGTON DESSAU.....	The Torrens System for the Registration of Land Titles.
1903.	RICHARD D. MEADER.....	Sunday as Viewed by American Law.
1903.	P. W. MELDRIM.....	Cicero.
1903.	ORVILLE A. PARK.....	The State Bar Associations in 1901-1902.
1903.	ARTHUR GRAY POWELL.....	The Constitutionality, Operation, and Effect of Laws Taxing Franchises and Especially the Georgia Franchise Tax Act.
1903.	LOUIS F. GARRARD.....	The Evolution of the Fourteenth Amendment.
1903.	GEORGE F. GOBER.....	Trial by Jury.
1903.	JAMES BISHOP, JR.....	Government by Injunction.
1903.	CHARLES JEWETT SWIFT.....	Jefferson and the Contributions of His Masterly Genius to the Genesis and Growth of American Constitutional History.

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1904.	J. H. LUMPKIN.....	Problems and Progress.
1904.	T. M. CUNNINGHAM, JR.....	Admiralty Law in the United States.
1904.	SHEPARD BRYAN.....	The Rule of Equality in Taxation.
1904.	EUGENE RAY.....	Young Lawyers and Some of the Obstacles they Encounter.
1904.	W. R. HAMMOND.....	The Mission of the Lawyer.
1904.	{ BARRY WRIGHT THOS. F. CORRIGAN }	What Further Restrictions on the Elective Franchise, if Any, Are Desirable in Georgia?
1905.	LOGAN E. BLECKLEY.....	Some Revised Thoughts of An Old Man—An Old Lawyer.
1905.	EUGENE RAY.....	A Justice of the Peace—A Justice Court—A Justice Court Lawyer—A Justice Court Law.
1906.	JOHN L. HOPKINS.....	The Lawyer in Government.
1906.	H. M. PATTY.....	What Preventive Legislation is Necessary With Reference to Divorce?
1906.	EMORY SPEER	The Initiative of the President.
1906.	ALEXANDER AKERMAN.....	The Power of Municipal Courts.
1906.	ALEXANDER W. SMITH.....	Should the Bankruptcy Law be Repealed?
1906.	WILLIAM W. GORDON, JR.....	Defects in Our Criminal Procedure and the Remedies Therefor.
1906.	W. L. SCRUGGS.....	Evolution of the Fourteenth and Fifteenth Amendments.
1906.	JAMES H. BLOUNT.....	Some Legal Aspects of the Philippines.
1906.	CHARLES R. WILLIAMS.....	The Legal Status of the Panama Canal Zone.
1906.	LOGAN E. BLECKLEY.....	Value as Quality.
1906.	JAMES H. GILBERT.....	Federal Control of Life Insurance.
1906.	SHEPARD BRYAN.....	The Corporation as Defendant in Criminal Prosecutions.
1906.	W. A. WIMBISH.....	Judicial Review of the Rates of Carriers.
1906.	J. CARROLL PAYNE.....	<i>Magna Carta</i> , in its True Light and in its Actual Relation to the Liberties of the English People.
1907.	JOSEPH R. LAMAR.....	History of the Establishment of the Supreme Court of Georgia.
1907.	HENRY MCALPIN.....	The Court of Ordinary.
1907.	HENRY A. ALEXANDER.....	Defects in the Georgia Laws Relating to Liens of Mechanics and Materialmen.

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1907.	W. C. BUNN.....	The Development of the Law in Georgia with Regard to Child Labor in Factories.
1908.	{ ANDREW J. COBB ALEX W. SMITH }	How Far Should Public Utility Corporations be Controlled, and by What Means?
1908.	{ T. M. CUNNINGHAM, JR. SAMUEL H. SIBLEY L. W. BRANCH }	The Use of Injunctions by Federal Courts as to State Laws.
1908.	WRIGHT WILLINGHAM.....	Labor Unions and Kindred Organizations from the Lawyer's Standpoint.
1909.	W. L. GEICE.....	Recollections of the Supreme Court of Georgia.
1909.	{ HAMILTON DOUGLAS GEO. S. JONES }	The Guaranteeing of Bank Deposits by the State and Federal Governments.
1909.	WALTER A. HARRIS.....	The Legal Aspects of the Recent Amendment to the Constitution of Georgia Regulating the Elective Franchise.
1909.	WM. H. FLEMING.....	The Treaty-Making Power of the President and Senate: How Affected by the Powers Delegated to Congress, and by the Powers Reserved to the States.
1909.	{ GEORGE W. OWENS JOHN T. NORRIS JOHN D. POPE HEWLETT A. HALL }	What is the Best Method for Selecting Judges and Solicitors-General?
1909.	JOEL BRANHAM.....	Some References to Our Laws Prior to the War Between the States.
1910.	{ SAMUEL H. SIBLEY SAMUEL B. ADAMS }	Appellate Courts, Their Number, Constitution, and Jurisdiction.
1910.	{ HENRY C. HAMMOND I. J. HOFMAYER }	Superior Courts of Original Jurisdiction, Their Number, Constitution, and Jurisdiction.
1910.	{ J. R. POTTLE A. A. LAWRENCE }	Procedure in the Courts of Original Jurisdiction.
1910.	{ WALTER MCELREATH MAX MICHAEL }	Justice Courts, Their Number, Constitution, and Jurisdiction.
1910.	GEORGE HILLYER.....	Procedure in Criminal Cases.
1910.	ALEX. C. KING.....	Lawlessness, Form and Reform.

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1911.	DUPONT GUERRY.....	The Three Judiciaries.
1911.	{ A. F. DALEY F. WILLIS DART }Superior Courts of Original Jurisdiction, Their Number, Constitution and Jurisdiction.
1911.	{ ROBERT M. HITCH W. C. BUNN W. K. MILLER }Procedure in Courts of Original Jurisdiction.
1911.	J. S. SLICER.....	Justice Courts; Their Constitution, Jurisdiction, and the Procedure Therein.
1911.	A. W. EVANS.....	Procedure in Criminal Cases.
1911.	J. CARROLL PAYNE.....	A Celebrated Case—The Myra Clark Gaines Litigation.
1911.	J. C. C. BLACK.....	Rufus Choate's Speech Against Popular Election of Judges.
1912.	W. R. HAMMOND.....	Evil and Cure of Monopolistic Business Tendency.
1912.	ROBERT C. ALSTON.....	A State Within a State in Georgia.
1912.	{ HENRY C. HAMMOND ROLAND ELLIS E. R. BLACK JOHN L. HOPKINS }Admission of Women to the Bar.
1913.	ALBERT H. RUSSELL.....	The Preparation of a Brief.
1913.	HAMILTON MCWHORTER.....	The Recall As Applied to the Judiciary.
1913.	JOHN R. L. SMITH.....	The Constitution of Georgia—Executive Department.
1913.	WM. G. BRANTLEY.....	The Constitution of Georgia—Legislative Department.
1913.	WRIGHT WILLINGHAM.....	Georgia's Constitution of 1877 as Relates to the Judiciary; Some Comparisons with Other States and Some Proposed Changes.
1913.	WALTER MCELREATH.....	The Provisions of the Constitution of 1877 Relating to Finance, Taxation and the Public Debt.
1913.	{ EDGAR WATKINS .. H. J. FULLBRIGHT HATTON LOVEJOY }A Constitutional Convention Unnecessary.
1914.	H. C. PEEPLES.....	Woman Under the Law.
1914.	JOEL BRANHAM.....	The Emancipation of Woman in Georgia.
1914.	P. C. McDUFFIE.....	Woodrow Wilson—A Georgia Lawyer.
1914.	WALTER G. CHARLTON.....	A Judge and a Grand Jury.

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1914.	J. R. POTTLE.....	Should There be Two Courts of Last Resort in Georgia, and if so, How Should They be Related to Each Other?
1914.	R. D. MEADER.....	The Circuit Rider by the Sea.
1914.	O. J. LILLY.....	The Circuit Rider in the Blue Ridge.
1914.	H. F. LAWSON.....	The Circuit Rider in the Wiregrass.
1915.	HOLLINS N. RANDOLPH.....	Federal Reserve Banking System.
1915.	A. W. COZART.....	The Miscarriage of Justice.
1915.	HARRY S. STROZIER.....	Judicial Nosegays.
1915.	L. W. BRANCH.....	Workmen's Compensation Laws.
1915.	JOHN W. HENLEY.....	The Practice of Law in the Georgia Mountains.
1915.	LAMAR C. RUCKER.....	Marriage and Divorce in Georgia.
1915.	JOHN B. HARRIS.....	Marriage and Divorce in Georgia.
1915.	BOOZER PAYNE.....	Divorce Law and its Administration in Georgia.
1915.	A. B. CONGER.....	The Divorce Problem.
1915.	W. D. ELLIS.....	Divorce—Some Observations on the Situation. The Present Law and Experiences in its Administration, and Some Suggested Changes.
1915.	JOHN C. HART.....	The Georgia Equalization Tax Act and its Operation.
1916.	LUTHER Z. ROSSER.....	A Comparison of Our Criminal Judicial System—Its Defects and Enforcement.
1916.	JOEL BRANHAM.....	Equalizing Everybody.
1916.	Z. D. HARRISON.....	The Supreme Court of Georgia.
1916.	R. C. ALSTON.....	Concerning Lynching.
1916.	S. B. ADAMS.....	Lynching and Its Remedy.
1916.	{ JOEL BRANHAM A. W. COZART ROLAND ELLIS HENRY C. HAMMOND W. IRWIN MACINTYRE } Interesting and Humorous Experiences at the Bar.
1916.	{ ALEXANDER C. KING A. A. LAWRENCE WARREN GRICE } The Relief of Georgia Appellate Courts.
1916.	A. W. COZART.....	Legislation Suggested.

MEMORIALS.

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|------------------------------|--------------------------------|
| 1886—L. N. Whittle | 1904—William T. Gary. |
| 1887—Wm. E. Collier | 1904—Pope Barrow |
| 1888—Samuel Hall | 1904—Thomas A. Atkinson |
| 1890—Thomas R. R. Cobb | 1905—Washington Dessau |
| 1891—James M. Smith | 1905—C. A. Turner |
| 1891—W. S. Chisholm | 1905—W. B. Butt |
| 1891—Joan McPherson Berrien | 1906—Thomas J. Simmons |
| 1891—John T. Clarke | 1906—Walter B. Hill |
| 1894—L. Q. C. Lamar. | 1906—Robert Gallaudet Erwin |
| 1894—John S. Davidson | 1906—James Madison McNeill |
| 1894—B. P. Hollis | 1906—John W. Park |
| 1894—A. Pratt Adams | 1907—Logan E. Bleckley |
| 1894—John Peabody | 1907—Augustin H. Hansell |
| 1894—James T. Nisbet | 1907—Lionel C. Levy |
| 1894—Richard F. Lyon | 1907—Peter Preer |
| 1894—Robert S. Lanier | 1907—Buford McDonald Davis |
| 1894—Charles C. Jones, Jr. | 1907—Clem Powers Steed |
| 1897—Hiram Warner | 1908—Logan E. Bleckley |
| 1897—Edwin A. Cohen | 1908—John W. Akin |
| 1897—Morgan McMichael | 1908—Frank Harvey Miller |
| 1897—Aurelian F. Cooledge | 1908—James Bishop, Jr. |
| 1897—A. R. Lawton | 1908—Robert T. Fouché |
| 1898—Archibald T. McIntyre | 1908—George Wilton Williams |
| 1899—Richard H. Clark | 1908—John W. Stubbs |
| 1899—John D. Berry | 1909—Frank Harvey Miller |
| 1899—Marshall J. Clarke | 1909—Louis F. Garrard |
| 1899—Thomas R. R. Cobb | 1909—R. T. Dorsey |
| 1899—A. S. Giles | 1909—Floyd L. Scales |
| 1899—John T. Glenn | 1910—Thomas J. Chappell |
| 1899—Nathaniel J. Hammond | 1910—William Pinckney Hill |
| 1899—Thomas W. Latham | 1910—Howard Van Epps |
| 1899—Wm. M. Reese | 1910—Olin J. Wimberly |
| 1899—E. A. Smith | 1910—Howell Cobb |
| 1899—U. P. Wade | 1912—Adam Leopold Alexander |
| 1899—James Whitehead | 1912—William Carden Bunn |
| 1899—Robert Whitfield | 1912—Thomas Goodwin Lawson |
| 1900—Clifford Anderson | 1913—Joseph Meriwether Terrell |
| 1900—W. Y. Atkinson | 1913—John Livingston Hopkins |
| 1900—Carey J. Thornton | 1913—Peter Francisco Smith |
| 1900—S. N. Woodward | 1913—James D. Kilpatrick |
| 1901—Brantley A. Denmark | 1914—Augustus Octavius Bacon |
| 1901—John P. Shannon | 1914—Thomas P. Westmoreland |
| 1902—C. C. Smith | 1914—Albert H. Russell |
| 1902—Robert Falligant | 1915—Isaac Hardeman |
| 1902—Walter Scott Chisholm | 1915—Leonard Strickland Roan |
| 1902—Porter King | 1915—Henry Franklin Dunwoody |
| 1902—Nathaniel J. Hammond | 1915—W. C. Snodgrass |
| 1903—Francis Downing Peabody | 1915—Leander Kennedy |
| 1903—Henry Bethune Tompkins | 1916—Joseph Rucker Lamar |
| 1903—Matthew James Pearsoll | 1916—Frederick C. Foster |
| 1904—Samuel Lumpkin | 1916—William F. Eve |
| 1904—Henry T. Lewis | 1916—Alexander F. Daley |
| 1904—Henry G. Turner | 1916—Anthony Cowart Pate |

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Disposition of Matters by the Association

Resolution requesting the General Assembly to enact laws enabling women to practice law in Georgia, defeated. See pages 12-15, 44-59.

Secretary directed to have printed and distributed one thousand copies of the Report of the Legislative Commission on Registration of Land Titles. See pages 28-31.

Resolution requesting the Supreme Court and the Court of Appeals to adopt rules requiring the submission of cases on abstracts, counter-abstracts, and briefs, adopted. See pages 33-39.

Secretary directed to have printed three hundred copies of the Report of the Commission on Uniform State Laws. See pages 39, 40.

One hundred dollars appropriated to the Commission on Uniform State Laws. See page 40.

Resolution directing that the Memorials of Joseph Rucker Lamar presented to the Supreme Court of Georgia and the Supreme Court of the United States be printed in the Annual Report, adopted. See pages 40, 41.

Resolution expressing regret at the absence of Judge Walter G. Charlton, adopted. See page 42.

Resolution condemning the practice of calling lawyers "colonel," adopted. See pages 42-44.

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